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No. 84-5555

In the Supreme Court of the United States

OCTOBER TERM, 1984

LARRY GENE HEATH, PETITIONER

v.

STATE OF ALABAMA, RESPONDENT

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 4, 1984
CERTIORARI GRANTED MARCH 4, 1985

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Proceedings
	SUPERIOR COURT OF TROUP COUNTY, GEORGIA
11/3/81	Mr. Larry Heath [Petitioner] and five other persons are indicted by grand jury for the murder [Ga. Code § 26-1101 (1968)] of Mrs. Rebecca Heath.
11/3/81	State of Georgia serves notice to Mr. Heath of aggravating circumstance under Ga. Code § 27-2534.1(b)(6) (1973), seeking death penalty.
2/10/82	Mr. Heath pleads guilty to murder, Ga. Code § 26-1101 (1968); is sentenced to life imprisonment. Ga. Code § 27-2528 (1973).
	CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA
5/5/82	Mr. Larry Heath indicted by grand jury for murder during kidnapping [Ala. Code § 13A-5-40(a)(1) (1981)] of Mrs. Rebecca Heath.
11/2/82	Mr. Heath pleads autrefois convict and former jeopardy under the Alabama and United States Constitutions.
11/3/82	Judge sets hearing on pleas for 11/24/82.
11/4/82	Mr. Heath enters plea to territorial jurisdiction.
11/24/82	Hearing on pleas of autrefois convict and former jeopardy under Alabama and United States Constitutions.
12/10/82	Judge rejects pleas of autrefois convict and former jeopardy under Alabama and United States Constitutions.
12/10/82	Judge defers ruling on plea to jurisdiction until close of defendant Mr. Heath's case-in-chief.

Date	Proceedings
12/13/82	Judge amends deferral on ruling on plea to jurisdiction setting ruling for close of prosecution's case-in-chief.
1/10 to 1/12/83	Mr. Heath is tried for murder of Mrs. Rebecca Heath. Ala. Code § 13A-5-40(a)(1) (1981)
1/11/83	Mr. Heath renews pleas of autrefois convict and former jeopardy under Alabama and United States Constitutions in open court.
1/12/83	Mr. Heath moves for directed verdict of acquittal at close of prosecution's case-in-chief on basis of plea to territorial jurisdiction. Motion and plea are denied.
1/12/83	Mr. Heath renews pleas of autrefois convict and former jeopardy under Alabama and United States Constitutions at close of prosecution's case-in-chief. Pleas are again denied.
1/12/83	Jury finds Mr. Heath guilty of murder. Ala. Code § 13A-5-40(a)(1) (1981).
1/13/83	Sentencing hearing. Jury renders advisory verdict of death sentence.
2/9/83	Presentence hearing.
2/10/83	Trial judge makes findings; sentences Mr. Heath to death.
	ALABAMA COURT OF CRIMINAL APPEALS
2/10/83	Automatic appeal filed.
7/5/83	Court affirms Mr. Heath's conviction and sentence; rejects Mr. Heath's pleas of autrefois convict and former jeopardy under the Alabama and United States Constitutions.
8/2/83	Court rejects Mr. Heath's petition for rehearing.

Date	Proceedings
	SUPREME COURT OF ALABAMA
8/10/83	Mr. Heath filed petition for writ of certiorari with court.
8/25/83	Petition for writ of certiorari granted.
7/6/84	Court affirms Mr. Heath's conviction and death sentence; rejects Mr. Heath's pleas of autrefois convict and former jeopardy under the Alabama and United States Constitutions.

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

No. CC-82-392

STATE OF ALABAMA

vs.

LARRY GENE HEATH, DEFENDANT

INDICTMENT FOR MURDER RETURNED BY GRAND JURY OF TROUP COUNTY, GEORGIA NOVEMBER 3, 1981

[Trial Record at 740. Also set out at trial record at 750, 798, and 808.]

* * * *

In the name and behalf of the citizens of Georgia, charge and accuse LARRY GENE HEATH, JERRY WAYNE HEATH, DENISE PAIGE LAMBERT, CHARLES EDWARD OWENS a.k.a. "SLIM", GREGORY HUGHES LUMPKIN, and SAMMY WILLIAMS a.k.a. "CASH" with the offense of MURDER (26-1101); for that the said LARRY GENE HEATH, JERRY WAYNE HEATH, DENISE PAIGE LAMBERT, CHARLES EDWARD OWENS a.k.a. "SLIM", GREGORY HUGHES LUMPKIN, and SAMMY WILLIAMS a.k.a. "CASH" on the date of August 31, 1981.

In the county aforesaid, did then and there unlawfully and with malice aforethought cause the death of Rebecca McGuire Heath, a human being, by shooting her with a gun, a deadly weapon.

IN THE SUPERIOR COURT OF TROUP
STATE OF GEORGIA

Indictment No. ———
Charge: Murder—Death Penalty

THE STATE OF GEORGIA

v.

LARRY GENE HEATH

NOTICE OF AGGRAVATING CIRCUMSTANCES

The State desires to seek the Death Penalty in the above-styled case;

You, LARRY GENE HEATH, are hereby placed on notice that the State shall seek the Death Penalty in the above-referenced case, and further, that the State seeks the Death Penalty under the following section of Georgia law, *Ga. Code 27-2534.1*, and expects the aggravating circumstance to be shown under the evidence to be that:

Code 27-2534.1(6). The offense of Murder of REBECCA McGUIRE HEATH was caused and directed by defendant LARRY GENE HEATH.

The State respectfully requests the Court to notify the jury in writing of the above aggravating circumstance under the evidence in said case so that the jury, if they recommend the Death Penalty, shall give the above aggravating circumstance to support said sentence if they (the jury) so find said circumstances to exist under the evidence in said case.

Respectfully submitted,

/s/ Art Mallory
ART MALLORY
District Attorney
Coweta Judicial Circuit

[Trial Record at 742. Also set out at trial record at 752, 800, and 810. Certificate of Service omitted.]

IN THE SUPERIOR COURT
OF TROUP COUNTY, GEORGIA
February Term, 1982

Case No. 986

Charge—Murder

THE STATE

vs.

LARRY GENE HEATH

PLEA OF GUILTY

WHEREUPON it is ordered and adjudged by the Court that the Defendant(s) LARRY GENE HEATH be taken from the Bar of the Court to the jail of Troup County, and be there safely kept until a sufficient guard is sent for him from the State Penal System and be then delivered to, and be by said guard taken to such penal institution in said system as the Director of Corrections may direct, where he, the said defendant, shall be confined at labor for a term of LIFE to be computed according to law.

• • • •

The defendant(s), LARRY GENE HEATH (was) represented in this matter by the Honorable LEE HASTY AND R. MICHAEL KEY, attorney at law, of LAGRANGE, GEORGIA.

By the Court February 10, 1982

/s/ Joseph Jackson
Judge Superior Court
Coweta Circuit
Presiding

District Attorney

[Trial Record at 744. Also set out at trial record at 754, 802, and 812.]

THE STATE OF ALABAMA
RUSSELL COUNTY CIRCUIT COURT

Spring Term, 1982

INDICTMENT FOR MURDER DURING KIDNAPPING RETURNED BY GRAND JURY OF RUSSELL COUNTY, ALABAMA MAY 5, 1982

[Trial Record at 728.]

The Grand Jury of said County charge that before the finding of this Indictment Larry Gene Heath did intentionally cause the death of Rebecca Heath, by shooting her with a gun, and Larry Gene Heath caused said death during Larry Gene Heath's abduction of, or attempt to abduct, Rebecca Heath with intent to inflict physical injury upon her, in violation of § 13A-5-40(a)(1) of the Code of Alabama 1975, as amended, against the peace and dignity of the State of Alabama.

/s/ Wm. J. Burton
District Attorney of the
26th Judicial Circuit

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

Case No. CC-82-392

STATE OF ALABAMA, PLAINTIFF

vs.

LARRY GENE HEATH, DEFENDANT

PLEA OF AUTREFOIS CONVICT

Comes the Defendant by and through his Court appointed Counsel, Larry W. Roney, and for plea says:

The State ought not to further prosecute this Indictment against him because at November, 1981 term of Superior Court of Troup County, Georgia, an Indictment was found and presented against him charging that Larry Gene Heath on the date of August 31, 1981, in the County aforesaid, did then and there unlawfully and with malice aforethought cause the death of Rebecca McGuire Heath, a human being, by shooting her with a gun, a deadly weapon. That the State of Georgia sought the death penalty under the following section of Georgia law, *Ga. Code 27-2534.1*, and expected the aggravating circumstances to be shown under the evidence that: *Code 27-2534.1(6)*. The offense of Murder of REBECCA MCGUIRE HEATH was caused and directed by Defendant, LARRY GENE HEATH. Said Indictment bears the case number of 986, Page 198 in the Superior Court of Troup County, Georgia. A copy of said Indictment and Notice of Aggravating Circumstances are attached hereto as Exhibit "A"; that at February, 1982 term of said Court, on, to-wit: the Defendant entered a plea of guilty to the charge of Murder of Rebecca McGuire Heath as charged in said Indictment in case number 986, docket number 198 in the Superior Court of Troup

County, Georgia and was duly convicted by said Court of said offense charged, which this Defendant alleges was based upon and is of the same matters and transactions as is alleged in this Indictment or prosecution, of which he is now charged. All of which the Defendant is ready to verify and prays judgment that he should be discharged as to the present Indictment. A copy of the judgment and sentence of the Superior Court of Troup County, Georgia, in case number 986, docket number 198 is attached hereto as Exhibit "B".

DATED: November 2, 1982

LARRY W. RONEY
Attorney at Law, P.C.

By: /s/ Larry W. Roney
LARRY W. RONEY
P.O. Box 128
Phenix City, Alabama 36867-0002
Attorney for Defendant

/s/ R. Michael Raiford
R. MICHAEL RAIFORD
Attorney for Defendant

[Trial Record at 735-6. Supporting documents omitted.]

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

Case No. CC-82-392

STATE OF ALABAMA, PLAINTIFF

vs.

LARRY GENE HEATH, DEFENDANT

PLEA OF FORMER JEOPARDY

Comes the Defendant by and through his Court appointed attorney of record, Larry W. Roney, and for plea says:

He has once been in jeopardy for the offense of which he is now charged in this Indictment and that, at the November, 1981 term of the Superior Court of Troup County, Georgia, to-wit: on the 10th day of February, 1982, the Defendant was in due form arraigned and pleaded not guilty to the said offense charged, which was in substance as follows: for that the said Larry Gene Heath on the date of August 31, 1981, in the County aforesaid, did then and there unlawfully with malice aforethought cause the death of Rebecca McGuire Heath, a human being, by shooting her with a gun, a deadly weapon. That the State of Georgia sought the death penalty under the following section of Georgia law, *Ga. Code 27-2534.1*, and expected the aggravating circumstances to be shown under the evidence to be that: *Code 27-2534.1(6)*. The offense of Murder of Rebecca McGuire Heath was caused and directed by Defendant Larry Gene Heath. Said Indictment bears the case number of 986, Page 198 in the Superior Court of Troup County, Georgia. A copy of said Indictment and Notice of Aggravating Circumstances are attached hereto as Exhibit "A"; and that the Defendant was thus put upon trial for such offense and, after he had pleaded to the

same and was thus in jeopardy, that on February 10, 1982, the Defendant entered a plea of guilty to the charge of Murder of Rebecca McGuire Heath as charged in said Indictment in Case Number 986, Docket 198 in the Superior Court of Troup County, Georgia, and was sentenced to life imprisonment. A copy of said judgment and sentence is attached hereto as Exhibit "B". That said prosecution and conviction bars a subsequent prosecution for the same offense, all of which the Defendant is ready to verify, and he prays judgment of this Court that he be discharged from the premises in the present Indictment specified.

DATED: November 2, 1982

LARRY W. RONEY
Attorney at Law, P.C.

By: /s/ Larry W. Roney
LARRY W. RONEY
P.O. Box 128
Phenix City, Alabama 36867-0002
Attorney for Defendant

/s/ R. Michael Raiford
R. MICHAEL RAIFORD
Attorney for Defendant

[Trial Record at 745-6. Supporting documents omitted.]

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

No. CC-82-392

STATE OF ALABAMA

vs.

LARRY GENE HEATH, DEFENDANT

TRIAL JUDGE'S FINDINGS AND ORDERS REGARDING PLEAS OF AUTREFOIS CONVICT AND FORMER JEOPARDY DECEMBER 10, 1982

[Trial Record at 774-7.]

ORDER

The defendant has filed a motion to suppress, plea to the jurisdiction, plea of former jeopardy, and a plea of autrefois convict. A hearing was held on these motions, at which oral testimony was heard by the Court and exhibits were admitted into evidence. Counsel for the defendant have provided the Court a brief giving their contentions and authorities therefor. Based upon the foregoing, the Court makes the following findings of fact:

a. Larry Gene Heath, the defendant herein, was indicted by the November, 1981 term of the grand jury for the Superior Court of Troup County, Georgia for the murder of Rebecca McGuire Heath. On November 3, 1981 the District Attorney for Troup County gave defendant written notice that it was seeking the death penalty under the aggravating circumstances that the district attorney expected to prove that the murder or

Rebecca McGuire Heath was caused and directed by the defendant.

b. On February 10, 1982 defendant entered a plea of guilty in the Superior Court of Troup County, Georgia to the offense of Murder of Rebecca McGuire Heath. He was adjudged guilty of murder and sentenced to life imprisonment.

c. On May 5, 1982 the grand jury for the Spring Term, 1982 of Russell County Circuit Court indicted the defendant for the capital offense of murder of Rebecca Heath during a kidnapping in the first degree of Rebecca Heath.

The defendant contends that the prosecution of the offense charged in this case is barred by the constitutional doctrine of former jeopardy. He further contends in his plea of autrefois convict that the State of Alabama should not prosecute the indictment in this case because of the indictment, adjudication of guilt, and sentence entered in the Superior Court of Troup County, Georgia.

The Court of Criminal Appeals has held in *Hare v. State*, 387 So. 2d 299 (1980) that a conviction in one state for an act in violation of its laws is not a bar to a prosecution in another for the same act if it violates the laws of the latter state, unless it is otherwise provided by statute or unless by compact between the state it has been agreed that jurisdiction shall vest exclusively in the state first apprehending and arresting the accused.

There is no statute in Alabama barring the prosecution in the instant case. There is also no compact between Alabama and Georgia agreeing that jurisdiction will be in the state first arresting an accused.

Therefore, assuming arguendo that the crimes were the same in Georgia and Alabama or if the defendant's conviction of murder in Georgia were viewed as a lesser included offense of the crime charged in Alabama, defendant's pleas of former jeopardy and autrefois convict are inapplicable and not legally sufficient.

It is, therefore,

CONSIDERED, ORDERED, AND ADJUDGED BY THE COURT:

1. The plea of former jeopardy filed by defendant on November 2, 1982 is overruled and denied.

2. The plea of autrefois convict filed by defendant on November 2, 1982 is overruled and denied.

* * * *

DONE this the 10th day of December, 1982.

/s/ Wayne T. Johnson
Circuit Judge

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

No. CC-82-392

STATE OF ALABAMA,

vs.

LARRY GENE HEATH, DEFENDANT

PORTION OF PROSECUTION'S OPENING STATEMENT TO JURY CONCERNING ALABAMA'S LAW OF TERRITORIAL CRIMINAL JURISDICTION JANUARY 11, 1983

[Trial Record at 309-10.]

* * * *

[R-309] Ladies and gentlemen, this case is based on a state statute that says that if a crime is started in this state, within the county it's started it has what we call venue, which gives the court jurisdiction to try the case, even though it might have been consummated or completed outside of the county. Our laws are such that the legislature sets the laws up to protect the State of Alabama. The people affected become the witnesses. When an act is committed and whenever [R-310] we read an indictment, it's a crime against the State of Alabama.

Our law further says when you have a felony, that you have it submitted to the grand jury and the grand jury—

MR. RONEY: We're going to object to Mr. Benton quoting the law. The law is expected to come from the Court with regard to this matter.

THE COURT: If it's a matter of the indictment being brought, the objection will be overruled as to that particular part of an opening statement. Any quotation of the law, the objection will be sustained.

* * * *

TESTIMONY OF C. L. HUDSON, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 333-9.]

* * * *

[R-333] C. L. HUDSON

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. Will you state your name, please.

A. C. L. Hudson.

Q. Where do you live, Mr. Hudson?

A. In LaGrange, Georgia.

Q. I call your attention to August the 31st, 1981, in the morning part of the day, and I'll ask you where you were on that date, please, sir.

A. Well, at the particular time—let's say what particular time.

Q. Well, somewhere in the neighborhood of nine o'clock.

[R-334] A. Around nine o'clock? Okay. I was at my home on Smokey Road, which is in, I guess, the south part of Troup County or almost in Pine Mountain. I was at my home at nine o'clock.

Q. And could you turn your attention to approximately 9:15 and tell us where you were?

A. I left my home around nine or maybe 9:10 or so and was headed west on Smokey Road toward Hamilton Road, and at that time I saw a car—would you like me to tell you what I saw?

Q. Yes, sir, tell us what you saw and observed there that morning.

A. At that time I saw a car.

Q. First, could you describe the weather conditions at that time of day there?

MR. RAIFORD: Your Honor, we're going to object to the compound questioning; he hasn't had a chance to answer the question he originally asked him.

THE COURT: Let's take it a step at a time. Delay answering your question further.

Ask the question you were about to.

Q. Will you describe the weather conditions at approximately 9:15 A. M. on the day of August 31st, 1981?

A. Yes. It was a cloudy morning, hazy, foggy.

Q. All right, sir. If you will, now continue and tell us what you saw and observed that morning.

A. Okay. As I was traveling west on Smokey Road toward Hamilton Road I saw a car in the road in front of me. It apparently had turned out, turned around, or something, because when I came over the hill it was sideways in the road, and [R-335] then it straightened up and was going away from me at a high rate of speed.

* * * *

Q. And you say that the weather condition was sort of hazy?

A. It was hazy, cloudy, smoky.

* * * *

Q. I'll ask you if you saw anything else there, please, sir.

A. Well, after I passed the place where the car had turned around or pulled out of, say a hundred yards further down the road on the left-hand side of the road, there was a green car pulled off into the edge of the woods. It was probably thirty or forty feet off the road on the left-hand side.

Q. Did you go to that car or—

A. Well, to start with I went past the car, and I felt like something might be wrong, so I did turn around and go back to the car. I got out of my truck—I have a four-wheel drive truck—I got out of the truck, went down to

the car to see if anybody was in it. At that time the motor was [R-336] running on the car, the car was idling, the headlights were on, and the windows were fogged on the inside—you know, apparently somebody was inside the car breathing, and so forth.

And I looked into the front seat of the car, which I figured if anybody was hurt they would be in the front seat of the car, you know. The car was apparently against the trees on an inclined position. And I looked into the front seat of the car and nobody was in the front, and as I turned to the car I saw a knee sticking up in the back seat. That's all I saw, one bluejean covered knee. And I figured I was somewhere I shouldn't be; figured it was a kid's car or it was kids in the back seat, and I went back and got in my truck and left.

Q. Did you ascertain what kind of car or what color car it was?

A. It was a green Oldsmobile or something of that nature. It was a good clean-looking car, real clean.

MR. BENTON: That's all from this witness.

CROSS-EXAMINATION

Questions by Mr. Raiford:

Q. Mr. Hudson, where do you live, please, sir?

A. I live on Smokey Road.

Q. What town is that near?

A. It's ten miles from LaGrange and about eight miles from Pine Mountain. I guess you would say halfway between.

Q. Is that in Troup County, Georgia?

A. It's in Troup County.

Q. And you say it was a cloudy, hazy day?

[R-337] A. It was hazy, yes, sir.

Q. When you came up on the green vehicle that you described here you said the windows were frosted up like—

A. Yes, like when you're in a car and, you know, it's hazy looking on the inside, like it's frosted up on the inside?

Q. In order to do that, would someone have to have been inside breathing air?

A. Supposedly, yes. I'm sure if the car got there somebody had to drive it there.

Q. So at the time you got there you saw this fog on the windows from the inside?

A. Right.

Q. And you saw—you looked in the back seat and you saw one leg?

A. Right.

Q. Did you see anything else?

A. Not at the car, no.

Q. Did you look in the front seat?

A. I looked over in the front seat to see if anybody was up there and nobody was in the front seat.

Q. Did you see anything at all in the front seat?

A. I didn't see a person up there; that's what I was looking for.

Q. Did you see any objects up there?

A. I wasn't looking for objects; I didn't see an object.

Q. Did you see anything unusual about the front seat?

A. No, just a front seat of a car.

Q. You said it was a clean car?

A. It was a real nice clean car. The interior seemed—the best I can recall was a white color, a real neat, clean [R-338] looking car.

Q. You would have seen something in the front seat if it had been something in there?

A. If it had been a person in there I probably would have; but as far as an object, I wasn't looking for an object.

Q. You said inside the car was white?

A. To my knowledge, the best I can remember—I went over it in my mind—it appeared to be white or beige or a light color.

Q. That car you found was about 9:15 in the morning?

A. Right around that, 9:15.

Q. That's on Eastern Time over in Georgia, isn't it?

A. The same time, yes, Eastern Time.

Q. The same time we have here?

A. I think the particular time would have been Daylight Savings Time.

Q. So it would have been the same time it would have been here?

A. Yes.

Q. Did you testify in this case or other related cases up in Troup County, Georgia?

A. Right.

MR. BENTON: We object to that.

THE COURT: Objection will be sustained.

MR. RAIFORD: That's all we have, your Honor.

REDIRECT EXAMINATION

Questions by Mr. Benton:

Q. Mr. Hudson, have you seen on humid days cars fog up [R-339] when nobody was in them?

A. Oh, yes, I have.

Q. Was this day a damp day or a hazy day or a humid day?

A. It was a damp humid morning part, because with the Daylight Savings Time you're talking about, what, eight o'clock sun time?

Q. Let me ask you this: Could you make any determination if the car had recently been run at the time?

A. The car had just stopped there because—I'm sure most of you are familiar with how a car, when it starts cooling off, it will crackle. If you've driven one, the muffler system and all on it will pop and snap, the radiator, and so forth. It appeared to have been driven.

• • • •

TESTIMONY OF WILLIAM V. PRUITT, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 339-44.]

• • • •

[R-339] WILLIAM V. PRUITT

called as a witness by and in behalf of the State of Alabama, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. Will you state your full name for the record, please.
A. William V. Pruitt.
[R-340] Q. Mr. Pruitt, where do you live, please?
A. Big Springs Community, Troup County, Georgia.
Q. Where do you work?
A. Troup County Electric Membership Corporation.
Q. And were you working back on the date of August the 31st, 1981, at approximately 11:05 A. M. that morning?
A. Yes, sir, I was.
Q. And whereabouts were you working, please, sir?
A. I was traveling on the Smokey Road.
Q. Would you tell the Court and jury what you saw or observed there unusual on that morning?
A. Well, I was traveling west on the Smokey Road. About three-quarters to a mile from U. S. 27 I noticed this green Oldsmobile off the road against a pine tree. I passed the automobile—
MR. RONEY: Your Honor, we object to the narrative response to the question.
THE COURT: Ask you next question, please.
Q. All right, sir. And what did you do whenever you saw this car, please, sir?
A. At first I passed it, then I stopped. Had no intention of stopping but something made me want to stop.

I stopped, backed up, and walked down, looked at the automobile.

Q. Tell the Court and jury what you saw or observed when you went over to the car.

A. When I walked down to the automobile I looked in the dri er's side—driver's part first, then I looked at the right front fender, which was up against a tree; and as I turned to walk away I looked in the back seat and saw this person [R-341] laying in the back seat.

Q. And what did you do next, please, sir?

A. I went to the truck, radioed our dispatcher, requested the sheriff to come down.

Q. Did anyone come in response to your call?

A. Yes, sir, Don Mallory, an investigator with Troup County, came.

• • • •

Q. Approximately what time was it when you examined—got to the car, in your best judgment?

A. About five minutes after eleven.

Q. And at that time was the motor off or was it running or—

A. The motor was off.

MR. BENTON: Thank you.

You may have the witness.

CROSS-EXAMINATION

Questions by Mr. Raiford:

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[R-342] Q. August 31st, '81.

Do you know what the weather was on this particular day?

A. Yes, sir, it was cloudy, threatening to rain. In fact, it was quite a bit of moisture in the air.

Q. Where was the car sitting when you first observed it?

A. It was a ninety-degree angle with the pavement, about fifty feet from the pavement against a pine tree.

Q. Was it rammed into the pine tree or just parked next to it?

A. It was run against the pine tree, right. It did damage to the right front fender?

Q. Right front fender?

A. Yes, sir.

Q. When you came to the vehicle were you able to look inside?

A. Yes, sir, no problem at all.

Q. The windows were clear in there?

A. Right; visibility good.

Q. You said the motor was not running?

A. The motor was not running.

Q. Did you observe whether the motor was warm or cool, or did you observe that?

A. Not until after Don Mallory got there, and it was warm at that time.

• • • •

[R-343] Q. Now, this road is located in Harris County, Georgia?

A. No, sir, Troup County.

Q. Troup County, Georgia?

A. Yes, sir.

• • • •

[R-344] Q. I have one more question for you, Mr. Pruitt. Did you observe the body that was in the back seat of the car?

A. Yes, sir, I did.

Q. Was it fully clothed?

A. Yes, it was.

Q. And was the body disarrayed in any way or was it just laying on the seat?

A. It was laying across the seat. It was appeared that she was sitting opposite the driver's side on the back seat and fell across the seat.

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TESTIMONY OF CHARLES DONALD MALLORY, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 346-50, 353-56.]

[R-346] CHARLES DONALD MALLORY

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Berton:

Q. Would you state your full name for the record, please, sir.

A. Charles Donald Mallory.

Q. Mr. Mallory, where are you employed?

A. Chief investigator with the Troup County Sheriff's Department.

* * * *

Q. Did you have an occasion to participate in the investigation of the death of Rebecca McGuire Heath?

A. Yes, sir, I did.

Q. Did this investigation include participating with the Russell County authorities as well as elsewhere?

A. Yes, sir.

Q. I'll ask you if you are familiar with a road designated as Smokey Road in Troup County, Mr. Mallory.

A. Yes, sir, I am.

Q. Did you have an occasion on the date of August the 31st, 1981, to go to that road?

A. I did.

Q. Approximately what time of the day was it when you arrived there, please, sir?

[R-347] A. It was approximately 11:15 A.M.

Q. And who if anyone else was there when you arrived there?

A. When I arrived Mr. Val Pruitt with the Troup County EMC was there.

Q. What did you see or observe when you arrived there, please, sir?

A. When I arrived the first thing I saw was this green Oldsmobile approximately fifty feet off the roadway up against a tree.

Mr. Pruitt was standing approximately ten feet away.

• • • •

[R-348] Q. What did you do next, sir?

A. As soon as I got out of my vehicle I immediately went to the driver's side of the car and noticed that there was a body laying on the back seat. I immediately opened the door, raised the driver's seat forward, attempted to find a pulse on the lady that was in the back seat, which I failed to get a pulse in the arm. I attempted to find one in the neck area; I was unable to get any pulse there. But I did notice at that time that the body was extremely warm, to the point of being wet under the neck with perspiration.

Q. Continue on, please.

A. As soon as I had determined that there was no heart or heartbeat or pulse or pulse beat, we called the ambulance to the scene.

Q. Now, was the body removed from the car?

A. After several photographs and a crime scene search was made, the body was removed from the car.

• • • •

[R-349] Q. I show you now what has been identified as State's Exhibit 3. Can you identify that exhibit?

A. Yes, sir. This is another photograph of the body that was on this morning in the rear seat, taken from the driver's side showing the position of the body and the face and the contents that were there with her, her purse and other shopping bag.

Q. Does that truly and accurately depict the scene as it existed of that subject matter at the time that you made that picture on the morning of August 31st, 1981?

A. Yes, sir.

• • • •

Q. Mr. Mallory, I show you what has been marked State's Exhibit 21 and I'll ask you if you can identify that exhibit, please, sir.

A. Yes, sir. This is a photograph that I took after the body had been removed from the automobile, that shows the rear seat and the floorboard area, shows the bloodstains in the rear seat, and also in the floorboard what appeared to me [R-350] as a piece of green plastic wire and a small red toy truck.

Q. Does that truly and accurately depict the area of the vehicle as it existed on August 31st, 1981, after the body was removed?

A. Yes, sir.

• • • •

Q. Now, after the body was removed did you go with the body to the hospital or wherever they took it?

A. Yes, sir. I followed the ambulance to the West Georgia Medical Center.

Q. Now, prior to the body being removed did you make an examination of the body itself?

A. Yes, sir. As soon as we got the body out of the rear seat and had it laid out on the stretcher, I then attempted to locate any wounds about the head area. At first glance there didn't appear to be any; then I opened the eyelids and found the left eye—I mean, excuse me —the right eye was damaged quite a bit. It appeared to have—that the eyeball was busted.

Q. Did you see any bruises, abrasions, or wounds on the body other than that wound that you have just referred to?

A. No, sir.

• • • •

[R-353] Q. Did you have occasion to look through the automobile itself?

A. Yes, sir.

Q. What if anything did you see or observe there in the car, Officer Mallory?

A. Well, after I determined that the victim was dead, and while waiting for the arrival of the ambulance, I went over the car and made my photographs, and in the floorboard of the front of the car, the floorboard next to the accelerator there was a brick lying approximately two inches from the acelerator. In the rear of the floorboard was, as the picture shows, a piece of green plastic wire and a toy truck.

[R-354] Q. Was this a two- or four-door automobile?

A. Two-door automobile.

On the floorboard in the rear on the driver's side was a spot of blood. I noticed another spot or two of blood on the passenger's side of the automobile on the edge of the front seat which raises back and forth on a two-door car. It was a couple of spots of blood there, and the blood where her head was lying on the seat.

MR. BENTON: I have nothing further from Officer Mallory.

CROSS-EXAMINATION

Questions by Mr. Roney:

Q. Investigator Mallory, you stated that there were spots of blood on the floorboard. Was that in the rear?

A. Rear floorboard, yes, sir.

Q. Rear floorboard on the—

A. Driver's side of the automobile in the rear floorboard.

Q. And there was a spot of blood where else did you say?

A. On the passenger side of the edge of the seat, the part that raises back and forth on a two-door, on the very edge as you open the door you can see spots of blood on that.

Q. Could you tell in your experience in the investigation of these type matters whether or not the spots of blood appeared to have been placed there by the body being rubbed up against the passenger side of the seat, or whether or not these were sort of a spatter type blood?

A. It was not smeared as it would be, say, putting [R-355] a body in the car. It looked more just like splattered type blood or just dropped on there.

Q. And also the spot that you found on the driver's side in the back seat there, in the floorboard, how did that spot of blood appear to be? Was it smeared?

A. It looked probably like one drop of blood. No, it was not smeared. It was almost a round circle.

Q. Did it appear to be a splatter type spot of blood, in your opinion?

A. No. This was very near where the hand was laying off the seat, and there was some blood on the hand and on the purse and the fingers. It's a possibility it dropped off from the fingers.

Q. You stated that the body was warm to the extent that the area under the neck was wet; is that correct?

A. That's correct, yes, sir.

• • • •

Q. Do you have a judgment in your own opinion whether or not the person that you examined, which has been identified as Rebecca Heath, whether or not death had occurred just prior [R-356] to your arriving on the scene, or do you have any judgment as to the time of death?

A. I estimated, just from my experience in dealing with deaths, that she probably had been dead no longer than a couple of hours.

Q. And you were there at approximately 11:15, when you first arrived on the scene?

A. Yes, sir.

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TESTIMONY OF PRENTISS L. GRIFFITH, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 358-64.]

* * * *

[R-358] PRENTISS L. GRIFFITH

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. Sheriff, will you state your name for the record, please.

A. Prentiss L. Griffith.

Q. Mr. Griffith, do you hold an elected position in Russell County?

A. Yes, sir, I do.

Q. What is that, please?

[R-359] A. Sheriff.

* * * *

Q. What if anything did you do when you first learned of the death of Rebecca Heath, please, sir?

A. We were notified of the death of Rebecca Heath and asked to go to the residence, the Heath residence, and notify a member of the family that they needed to come to LaGrange, [R-360] Georgia.

Q. What member of the family was that, please, sir?

A. Larry Heath, the husband.

Q. Did you go to the residence?

A. Yes, sir.

Q. Was he there?

A. No, sir, no one there.

Q. Did you go anywhere else in regard to trying to locate him?

A. Yes, sir. We went next door to a neighbor and was directed to go to Banner Building on Fourth Avenue and Victory Drive in Columbus.

Q. And what if anything did you do then?

A. We saw Larry Heath at the Banner Building, Fourth Avenue and Victory Drive.

* * * *

[R-361] Q. Did y'all go back and do that?

A. Yes, sir, we did.

Q. Sheriff, is that house located in Russell County, Alabama?

A. Yes, sir. It's off 165 on Sunderlan Drive.

Q. Now, after having done that did you have the occasion to assign any of your men to assist Mr. Boswell in working on this case?

A. No, sir. Mr. Boswell would have had authority to use the investigative department for that.

Q. Do you know Sheriff Lowe from—I mean, excuse me, Sheriff Jones from Troup County?

A. Yes, sir, I do.

Q. Did you see him or have occasion to work with him or Investigator Don Mallory?

A. Yes, sir.

Q. Was that done in Russell County or Troup County?

A. Both.

Q. Sheriff, let me ask you this: Did you make any trips to Troup County yourself?

A. Yes, sir, I did.

Q. Have you got a judgment as to how many trips you made there?

A. Concerning the case totally?

Q. Yes, sir.

A. Four or five; I believe five, Mr. Benton.

Q. Did you authorize your subordinates to make trips to cooperate in the ongoing investigation, your investigation as well as theirs?

A. Yes, sir, I did.

* * * *

[R-362] CROSS-EXAMINATION

Questions by Mr. Roney:

* * * *

[R-363] Q. You stated that you made four or five trips to Troup County.

A. Yes, sir.

Q. Did you ever go to the scene of the crime?

A. No, sir, I never did.

Q. You never went to Smokey Road, I believe, in Troup County?

A. No, sir.

Q. You've never been to where the car was found, the 1978 Cutlass Oldsmobile?

A. No, sir.

Q. Do you know the location?

A. Only that it's on Smokey Road, that's all I—

Q. Do you know the approximately distance from the courthouse to that location there?

A. From the courthouse here?

Q. Yes, sir.

A. No, sir, I really don't.

Q. You don't have any judgment?

A. Fifty miles, I guess.

Q. Fifty miles approximately?

A. I'm not sure of the distance between here and LaGrange.

Q. From the Heath residence off Highway 165, what would you estimate the distance from the Heath residence to the Smokey Road area in Troup County?

A. Not knowing, Mr. Roney, the exact location of the Smokey Road, I would not estimate that.

[R-364] Q. Do you know how far it is from the courthouse to the Heath residence, approximately?

A. From here to the Heath residence?

Q. Yes, sir.

A. Approximately three, three and a half miles.

Q. Three, three and a half miles? In your best judgment how long would it take you to drive from the Russell County courthouse to the Heath residence on a normal day?

A. Depending on the time of day and traffic conditions.

Q. Well, say, from seven o'clock in the morning until nine o'clock in the morning.

A. Ten minutes, at the most.

Q. On a normal day how long would it take you to drive from the courthouse in Russell County to the Smokey Road area?

A. (No answer.)

Q. Placing the time between seven and nine A.M.

A. I really don't know. I don't know the location of the—only the Smokey Road area, that it's in an area near or in LaGrange.

Q. So you don't know whether it's south or north of LaGrange or to the east or to the west?

A. I sure don't.

* * * *

TESTIMONY OF THOMAS F. BOSWELL, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 367, 385.]

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[R-367] THOMAS F. BOSWELL

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. State your name for the record, please, sir.
A. Thomas F. Boswell.
Q. Mr. Boswell, where are you employed?
A. Russell County Sheriff's Department.

• • • •

[R-385] Q. Could you name some of the other officers that did some work?
A. Deputy Ammons.
Q. Bobby Ammons?
A. Yes, sir. He picked up some items. I can't remember offhand who else was involved in it.
Q. I'll ask you if the Alabama Crime Lab participated in this investigation.
A. Yes, sir, they did.
Q. And who representing the lab?
A. Criminalist Ted Hudson from the Auburn lab came down.
Q. Do you have knowledge of any difficulty that Criminalist Hudson is having today in his family?
A. Well, yes, sir. To a certain degree, yes, sir.
Q. Would you tell us what the problem is?
MR. RONEY: Your Honor, we're going to—
MR. RAIFORD: Object. Hearsay.

THE COURT: Objection would be sustained.

MR. BENTON: We'll withdraw it, then.

Q. Mr. Boswell, can you or any of the officers that you worked with ascertain exactly what point and place that the fatal shot was fired into the head of Rebecca Heath?

A. Not that I know of, no, sir.

Q. I show you what's been marked as State's Exhibit 14. I'll ask you to examine that exhibit and identify it, if you can. What is in the exhibit, please, sir?

A. Looks like some jewelry: earrings, a watch, a necklace; a can of Arid Extra Dry deodorant and an instant—

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TESTIMONY OF HOMER A. DAVIS, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 402-4.]

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[R-402] HOMER A. DAVIS

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. Will you state your name for the record, please, sir.

A. Homer A. Davis.

Q. Mr. Davis, where do you live, please, sir?

A. Live on Overland Drive off of 165.

Q. And what is that community there called, please, sir?

[R-403] A. Sunderlan Drive I think is the word—I mean, is the name of the street they're using. It doesn't really have any name.

Q. Is that the street right adjacent to Sunderlan Church?

A. Right, sir.

Q. Do you know Larry Heath?

A. Yes, sir.

Q. Does he live on that street?

A. He did, yes, sir.

Q. I call your attention to the date of August 31st, 1981, at approximately seven or 7:15 in the morning. Could you tell us where you were?

A. I was leaving for work. My house is located down the street from him and I was going up toward 165 going to work at about 7:15.

Q. Did you see or observe any vehicles on the street that you live on or right adjacent to that street?

A. Yes, sir. There was a vehicle that turned in off of 165 onto Sunderlan Drive. And it was a casual observance of it, you know, I didn't notice it that much. It looked like a van at the time. I did notice an out-of-state tag on it on the front. As I proceeded on up to the stop sign the Heath car came on around the corner the same—

MR. RONEY: Your Honor, we're going to object to the narrative response to the question.

THE COURT: Objection will be sustained. Ask your next question.

Q. After you observed the first car you have testified to, Mr. Davis, did you see a second vehicle?

[R-404] A. Yes, sir.

A. I recognized that as the Heath car.

Q. Where was that relative to the first vehicle that you just testified to?

A. It came in right behind it, about ten or fifteen seconds after it.

Q. And what if anything further did you see and observe about these two vehicles?

A. As I pulled up to the stop sign I looked in my rear view mirror, both cars were parked side by side, one kind of on the side of the road, the other one in the middle. The Heath car was in the middle of the road. And I turned left and went on into town.

Q. And was that actually down on the street on which you live?

A. Yes, sir.

Q. Did you see any other vehicles around there at that time?

A. Not on that street; I didn't pay any attention to any others, no, sir.

Q. I show you what's been marked State's Exhibit 7. I'll ask you if you can identify that exhibit, please, sir.

A. Yes, sir. That is Sunderlan Drive going up towards 165 just below the Heath house.

Q. Would you take my pencil, please, sir, and put an X where you saw the cars parked side by side on that road?

A. It was approximately right in here.

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TESTIMONY OF ROBERT OWEN, WITNESS FOR THE PROSECUTION JANUARY 11, 1983

[Trial Record at 408-11.]

* * * *

[R-408] ROBERT OWEN

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. State your name for the record, please, sir.
A. Robert Owen.
Q. Mr. Owen, where do you live, please?
A. Fort Mitchell Road.
Q. Were you living there back on the date of August the 31st, 1981?
A. No, sir. Then I lived on Sunderlan Drive.
Q. Is that close to the same place that Larry Heath lived?
A. Yes, sir, across the street.
Q. I'll ask you if, calling your attention to the morning of August the 31st, 1981, at the hour of 7:15 or thereabouts, if you saw or observed anything relative to the area of the Sunderlan Church.
[R-409] A. Yes, sir. I saw the Heath vehicle leave his house and go meet a white Mustang down at the Sunderlan Baptist Church.
Q. You said you saw the Heath vehicle leave the Heath house?
A. Yes, sir.
Q. And go to the area of the Sunderlan Church?
A. Yes, sir.
Q. And meet a vehicle?
A. Yes, sir.

Q. What type vehicle did it meet, please, sir?

A. It was around a '65 Mustang, a white color.

Q. Now, did you see or observe anything other than that happen between these two cars?

A. Well, the person in the Heath vehicle got out and went to talk to the person in the Mustang.

Q. I show you what's been marked as State's Exhibit 5 and ask you if you can identify that exhibit.

A. Yes, sir. That's the church where the two cars were.

Q. Does that truly and accurately depict that church and that scene around the church as it existed that day, possibly with the exception of the foliage on the trees?

A. Yes, sir, I would think so.

Q. As far as the church and the roads in the area?

A. Yes, sir.

MR. BENTON: We move to introduce into evidence State's Exhibit 5.

MR. RONEY: We renew our objection, your Honor, based on the remoteness of the photo.

THE COURT: Objection will be overruled.

[R-410] It will be admitted into evidence as No. 5 for the state.

Q. I show you what's been introduced as State's Exhibit 6 and I'll ask you if you can identify that exhibit.

A. Yes, sir. This is the scene, the location I was in when I was looking toward the church on Sunderlan Drive.

Q. From that vantage point can you show where you were and where the cars were at the time you saw them?

THE COURT: Stand up and point it out to the jury.

MR. BENTON: If you will, stand up right here. We're going to do it in two sections. We're going to do it the first half and then move down to the other half. If you will, use a pen here and point out as you show it to the jury.

(The witness left the witness stand and stood before the jury box.)

A. I had come from my house down here and I stopped approximately right here.

Q. Hold it up like this, so they can see.

A. Right along here by the road, and the cars were right down here, right past the first driveway into the church, between the first and the second driveway.

Q. You had come from where, now?

A. From down here up—stopped right here at 165.

Q. And at that time, this road, does that lead down to the Heath house?

A. Yes, sir, my house and the Heath house.

Q. Let's move on down so the other members of the jury can see it, please. Go ahead.

A. I stopped right along here, and the Heath vehicle [R-411] and the other car was right down here in front of the church by these driveways.

Q. What happened after you saw these two cars get together there?

A. Well, the person that was in the Heath vehicle went to talk to the person in the white Mustang.

Q. And then what happened?

A. I went on to town; I don't have any idea; I went on to work.

MR. BENTON: Did everbody get to see that? Have a seat.

(The witness returned to the witness stand.)

MR. BENTON: That's all from this witness. Your witness.

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TESTIMONY OF WILLIAM J. MALUEG, WITNESS FOR THE PROSECUTION JANUARY 12, 1983

[Trial Record at 535, 539-40, 542-48, 550-51, 557, 560-61.]

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[R-535] WILLIAM J. MALUEG

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

REDIRECT EXAMINATION

Questions by Mr. Benton:

Q. Mr. Malueg, where are you employed, please, sir?

A. My name is Bill Malueg, I'm employed with the Georgia State Bureau of Investigation as a special agent.

• • • •

[R-539] Q. This has been marked as State's Exhibit 23 and I'll ask you to look at it and see if you can identify it, please.

A. Yes, sir. This is the waiver of rights certificate that Larry Heath signed in my presence and in the presence of Don Mallory, and this sheet contains a time that the waiver was signed and basically—

[R-540] Q. What time—

A. —enumerates what went on.

Q. What time was the statement taken?

A. 6:48 P.M. on September 4th, 1981.

• • • •

[R-542] Q. Will you please read the complete exhibit to the jury, please, sir, including the waiver of rights.

A. "Waiver Certificate. Date: 9/4/81. Time: 6:48 P.M. Place: Georgia State Patrol Barracks, LaGrange, Georgia.

"I, Larry Gene Heath, am twenty-nine years of age. My address is Route 6, Box 557E, Phenix City, Alabama. I completed the twelfth grade in school.

"I know that Bill Malueg, GBI, and Don Mallory, Troup County investigator, is a special agent with the Georgia Bureau of Investigation. He has told me that: one, I have the right to remain silent; two, anything I say can be used against me in a court of law. Three, I have the right to talk to a lawyer and have him present with me while I am being questioned; four, if I cannot afford to hire a lawyer, one will be appointed to represent me before any questioning, if I wish; five, I can decide at any time to exercise these rights and not answer any questions or make any statements.

"I understand my rights. Having these rights in mind, I am willing now to talk about the crime of murder of which I am suspected. I have not been threatened. I have not been promised anything. I have not been forced in any way to answer questions or make a statement." [R-543] And below that Larry Gene Heath's signature appears.

And then below that "Larry Gene Heath was advised of his rights by me at the time, date, and place shown above. He was not coerced in any manner to say or do anything. He freely and voluntarily waived his rights and agreed to answer questions and make a statement." I witnessed that and Don Mallory, investigator, also witnessed that.

Q. Will you read the statement now?

A. The written formal statement began at 7:50 P.M. on 9/4/81 in the interview room.

"I guess that this thing started about two or three weeks ago. I approached my brother, Jerry Heath, of what I had in mind to do. My oldest brother, Ricky Heath, was in trouble with the authorities already, and Jerry got in touch with them and set up a meeting with Ricky and myself. I told Ricky that I wanted my wife taken care of because I knew that if I got a divorce I

wouldn't be able to keep my son. The meeting took place at Lakebottom in Columbus. Money was passed. I gave Ricky $40.00 to spend the night in a motel. Ricky left and nothing happened. The job was supposed to be taken care of for $500.00. Ricky was going to be the 'in between,' if you want to call him that, and he was going to get someone to do it. But, like I said, nothing ever happened.

"When that fell through I got in touch with Jerry again and Jerry said he knew of somebody else that might do it. He got in touch with these people several times but nothing ever developed. So he finally told me where to go.

"The place that I went to was on Sixth Avenue in Columbus in an apartment on the top floor. I drew a map to show it better. I went over there alone about a week before [R-544] August 31st. Edward was the only one there and I talked to him about it. Edward's nickname is 'Slim.'

"He then"—excuse me—"He told me that he got in touch with—he told me that he would get in touch with me in the next couple of days. I don't remember the exact date but Slim and two other blacks came to Banner Buildings in a 1965 or 1966 Ford Mustang, solid white. The Mustang had Texas license plates on it. They stayed in the car and I came out to meet them. The individual that was supposed to actually do it walked off with me and we discussed how it was to be done. I told him that I wanted my wife to look like she had been in an accident. I paid him $100.00 up front and I was supposed to meet them at Slim's apartment after I got off work. He asked me if I had a pistol to scare her with, to get her in the car. I told him that I would bring it with me when I came to the apartment later that afternoon.

"When I got off work I went by the apartment and discussed how it was to be done and turned over my gun to him. This gun is the only one that I had and it was a .357 Magnum. The instructions that I gave them were

that she was to take me to work the following morning, and that he would know what corner to be at to force his way into the car with her. The guy that was supposed to get in the car with her was the one that I gave my gun to but I don't know his name.

"The next morning I stoped by Slim's apartment to finalize everything. They were supposed to be having transportation problems and I came up with another $300.00 for them to get a car with. I put that money into Slim's hands directly. That had to be either Tuesday or Wednesday of last week.

[R-545] "For two days straight Becky came to LaGrange to do some shopping and they never did anything in those two days. I tried to get in touch with them several times but no one was ever there. When I finally got with Slim again, which was in the latter part of last week, the man that he had found had dropped out of sight. So Slim said that he and his partner would do it. I don't know the partner's name but he was one who owned the white Mustang and, by phone conversation, I think that he lives in Benning Hills.

"For a couple of days I didn't hear anything out of Slim until he called my house Sunday night—(Monday morning)—"at two o'clock A.M. He told me that he had his partner there and that he was ready. I told him to call me at the office at nine o'clock A.M.

"I left the house early that morning about six A.M. The brick was already in the back floorboard because I had picked it up from where I had ran over it. I had also placed a blue wire in the back floorboard to be used to tie the steering wheel down.

"I went by Slim's apartment and explained to him how I wanted it done, and I gave him a phone number of where he could reach me so that I could—so I could turn my car over to him.

"I went over to Denise Lambert's apartment to wait for his call. He called between 7:15 A.M. and 7:30 A.M., I think. I asked Denise to follow me to the Chevron sta-

tion on Victory Drive. Slim and his partner showed up in the white Mustang maybe five or ten minutes before eight o'clock. I got into Denise's truck and they followed me to my house.

"I pulled down Sunderlan Drive and stopped. Slim's [R-546] partner was driving my car and he pulled up beside me and I pointed out the house to him. The white Mustang followed my car around the truck and they were side by side in front of my house when I backed the truck onto Highway 165. I had left the house unlocked but they had my keys and they got in the house with them.

"After I left my house I went to Denise's apartment and stayed there for fifteen minutes or so. Before we went to Denise's, though, we sat in the Chevron station on Victory Drive and waited for them to go by, but they never came by. So that's when we started to Denise's apartment.

"I had drawn them a map with instructions on where to go but they didn't follow them. After we left Denise's apartment, Denise drove me to the Chevron station where she let me and Hamilton out. I got a newspaper at the Chevron station and walked across the street to the Fisca station, where I talked to Ed, the manager.

"After that, I wanted to Banner Buildings to go to work. Like I said before, I had given them instructions on what to do but they didn't do it like I wanted them to. They were not supposed to have shot her. They were supposed to have tied down the steering wheel and placed the brick on the accelerator and made it look like an accident where the car went between the two ridges at Flat Shoals Creek. But they didn't do that. I was as shocked as anyone when I found out about—when I found out that she had been shot.

"The reason that I had this done is that I found out my wife had had an affair with another man and our relationship had just fallen apart. I knew that if I filed for a divorce I probably wouldn't have been able to keep

my son. [R-547] I feel almost certain that the baby she was carrying wasn't mine."

And I asked him a question: "Larry, is there anything that you would like to add or change or delete from this statement?"

Answer: "No."

"I can read and write and I have read the five pages of this statement and I swear to God that it is the truth."

And I signed my signature, Don Mallory signed his signature, and Larry Heath signed his signature.

Q. All right, sir. Now, how many pages does the statement consist of, please, sir?

A. Five pages of that statement.

Q. Are there any drawings or maps affixed as part of that?

A. Yes, sir. After the statement was taken Mr. Heath was in a very cooperative mood and he wanted to assist us in identifying the other people that were involved in this. Into the furtherance of that he drew a map or a sketch of where Edwards or Slim, who was later identified as Charles Edward Owens, where he lived. He drew a map of this for me and he signed his name on this also.

Q. All right, sir. Would you step down here before the jury, please, sir, and just hold the map up so that they can see?

(The witness left the witness stand and stood before the jury box.)

Q. Take half of them, take half there, and these people out here have got to see too. But stand right out here, please, and hold it up where they can see it.

[R-548] A. Okay. This is in Columbus, Sixth Avenue, and this is Fourth Street, and this is a housing project right here, Victory Drive, Sixth Avenue. And he gave me a description of the apartment complex, which is kind of like a horseshoe, and he drew that off and he put a mark right at the—on the top apartment and on the corner of where Slim lived.

* * * *

Q. Mr. Malueg, did you participate in the arrest of Charles Edward, alias Slim Owen?

A. Yes, I did.

• • • •

Q. Where was he arrested, please, sir?

A. He was arrested in the described apartment.

• • • •

[R-550] Q. Let me call your attention to the date of the 4th and 28th of '82 and I'll ask you if you were in Troup County on that date.

A. Yes, sir, I was.

Q. Were you with or in the same area in which Larry Heath was on that date?

A. Yes, sir.

Q. And what was the occasion for you to be there and him to be there at that time and place?

A. At that time we were in the process of trying Charles Edward Owens and Gregory Hughes Lumpkin and Mr. Heath was called to the stand as a witness to testify.

Q. I'll ask you if you were able to—first of all, was he sworn?

A. Yes, sir, he was.

Q. And were you in a position where you could hear what his statements were?

A. Yes, sir. I was seated at the prosecution table with the district attorney.

Q. I'll ask you if he made a statement with reference to the abduction of his wife from Alabama.

A. Yes, sir, he did.

• • • •

[R 551] Q. Were any spontaneous statements made by Mr. Heath?

A. Yes, sir. He had refused to testify, based on the fact, as he explained, that there was an implication that other charges might be filed at a later time because of

the fact that his wife was abducted from—and taken from Alabama.

MR. RAIFORD: Your Honor, we're going to object. That's an unresponsive answer to the question Mr. Benton asked.

THE COURT: Overruled. Go ahead.

A. That she was abducted and taken from Russell County, Alabama, into the State of Georgia, she crossed the state line.

Q. Do you know where Miss Denise Lambert lived, please, sir?

A. She lived in an apartment, 102, on—I believe it was 1200 Fifteenth Street in Columbus.

• • • •

[R-557] WILLIAM J. MALUEG

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

RECROSS-EXAMINATION

Questions by Mr. Roney:

• • • •

[R-560] Q. (By Mr. Roney) Officer Malueg, what was the nature of the investigation that you were conducting at the time the statement was taken which has been marked State's Exhibit 23?

[R-561] A. We were investigating the murder of Becky Heath.

Q. And where did that murder take place?

A. I don't know.

Q. Where was the body found?

A. Troup County, Georgia.

Q. During your course of your investigation have you been able to establish the place of the murder?

A. No, sir.

Q. Do you know of any knowledge or do you have any knowledge of anyone else that would have knowledge as to where the murder actually occurred?

A. I suspect some of the people I have been talking to have knowledge of that, but the investigators on the case--

Q. I'm talking about the state's witnesses or the law-enforcement officers that you have dealt with.

A. No, sir.

• • • •

TESTIMONY OF DOUG LUCAS, WITNESS FOR THE PROSECUTION JANUARY 12, 1983

[Trial Record at 568-72.]

* * * *

[R-568] DOUG LUCAS

called as a witness by and in behalf of the State of Alabama, having been first duly sworn, testified as follows on

DIRECT EXAMINATION

Questions by Mr. Benton:

Q. Will you state your name for the record, please, sir.

A. Doug Lucas.

Q. Mr. Lucas, where are you employed, please, sir?

A. Southern Discount, Columbus, Georgia.

Q. What is Southern Discount, please, sir?

A. It's a consumer finance company.

Q. A place you borrow money from?

A. Yes, sir.

* * * *

Q. Do you know Larry Heath?

[R-569] A. I do, sir.

Q. I'll ask you if you had an occasion to have an application for a loan made out by Larry to your company.

A. An application was placed through our company on September the 12th of '81.

* * * *

Q. Did Mr. Heath apply for more than one loan with you?

A. Only one loan, sir.

* * * *

Q. I may have misunderstood you just now. What date did you refer to earlier? Did you say "August" or "September?"

A. I stand corrected. It was August the 12th of '81 that we received the application. It was approved, subject to them signing, on the 13th; and being that it was connected [R-570] with real estate, they received the money on the 18th.

Q. For how much, please, sir?

A. Approximately $2,500.00.

Q. Could that loan have been made without the signature of Rebecca Heath?

A. It could not, sir.

Q. Did he attempt to secure it without her signature?

A. He hesitated to make the loan subject to her signing because—and the reason I asked him to sign—

MR. RAIFORD: Objection, your Honor, unresponsive to the question that has been asked.

THE COURT: Ask your question again.

Q. Did he attempt to get the money without her signature?

A. He didn't make an issue out of it that I recall.

Q. Well, did he ask for a loan with just his signature, not using his wife's signature?

MR. RAIFORD: You Honor, we object. It's a leading question.

THE COURT: Overruled.

Q. You may answer.

A. He wanted to know why she had to sign.

Q. He wanted to know what, sir?

A. Why she had to sign the papers.

Q. And the loan was made with both his signature and her signature on there?

A. Yes, sir.

Q. Whenever you advised Mr. Heath that his wife would have to sign it, what was his reaction?

A. He said, "Forget about it."

[R-571] Q. Then did he reconsider and apply for it?

A. He called me back again and I told him that I couldn't make it any other way; and he said, "Well, forget about it" the second time.

MR. RAIFORD: Your Honor, we object. There has been no predicate laid to a conversation.

THE COURT: Objection will be sustained.

Q. What date was that on, please, sir, tha the call was made, in your best judgment, if you know?

A. Somewhere around August the 10th.

Q. And was this by telephone?

A. Yes, sir.

Q. Had you talked to him on the telephone before, or were you familiar with his voice on the phone?

A. I was not, sir.

Q. When he ultimately made the loan, however, both signatures were on it?

A. Yes, sir.

MR. BENTON: Thank you, sir.

THE COURT: Anything further on direct examination?

MR. BENTON: No, sir.

MR. RAIFORD: We move to exclude the testimony as being immaterial and irrelevant to this cause, your Honor. We move to strike it and instruct the jury to disregard it.

THE COURT: Objection will be overruled; motions will be denied.

MR. RAIFORD: We move for a mistrial, then, your Honor.

[R-572] THE COURT: Mistrial will be denied. Do you have any questions on cross-examination?

MR. RAIFORD: Yes, sir.

THE COURT: Please go ahead.

* * * *

CROSS-EXAMINATION

Questions by Mr. Raiford:

Q. Mr. Lucas, when your company made the loan to Mr. and Mrs. Heath and you said that Becky Heath would be required to sign it, sign the application, was this a real estate loan or—

A. Yes, sir.

Q. —second mortgage?

A. Second mortgage loan.

Q. Now, if someone came in to make a loan at your business other than a second mortgage on a real estate, say just an unsecured loan or a signature loan, would you normally require both parties to sign it, husband and wife?

A. Only if he didn't have enough income to justify it.

Q. So in a normal loan if there's—a normal loan application, if there's—if one person—say the husband is working and the wife is not working, and it's not a real estate loan, would there be anything—I mean, would you not give a loan because there was only one signature there?

MR. ESTES: Your Honor, I'm going to have to object to that question. It's a compound question and it's unclear as to what a normal loan is supposed to be. I object to the question.

THE COURT: If you would rephrase it a little bit, narrow it down some, please.

* * * *

PLEAS TO TERRITORIAL JURISDICTION, AND OF AUTREFOIS CONVICT AND FORMER JEOPARDY DENIED BY TRIAL JUDGE AT CLOSE OF PROSECUTION'S CASE JANUARY 12, 1983

[Trial Record at 586-90.]

* * * *

[R-586] MR. BENTON: May it please the Court, the state rests.

* * * *

THE COURT: The state has rested. Defense counsel has informed me that certain motions are [R-587] desired to be made by them. Would you present those at this time, please?

MR. RONEY: Your Honor, the first question we have is—

THE COURT: I'm sorry, we can't hear you.

MR. ESTES: You need to stand behind the line, Larry, so he can hear you.

MR. RONEY: I'm sorry, I thought you were going to come up here.

Your Honor, first of all we would inquire of the Court whether or not the Court made a ruling on all motions which we have previously filed in this matter.

THE COURT: The only motions that have not been ruled upon at this point are a motion of former jeopardy or plea of former jeopardy and also a plea of autrefois convict.

MR. RAIFORD: A plea of jurisdiction also, your Honor. It should have been ruled on at the end of the state's case.

THE COURT: You bring that up again at this point?

MR. RONEY: Yes, sir, we also interpose the plea of jurisdiction in that there has been no showing—first of

all, we would move to exclude the state's evidence, your Honor, and specifically as grounds for the exclusion of the state's evidence the fact that the state has failed to prove the venue or jurisdiction of the crime itself. The state's evidence clearly from the stand indicates that the officers themselves do not know where the murder occurred, [R-588] whether it was the State of Georgia or State of Alabama. The only thing that Officer Malueg, I believe, testified to was that the body was found in Troup County, Georgia. Officer Mallory testified that the body was warm, having not been dead more than probably two hours, that the body had perspiration marks around the neck indicating that it was a recent death. There has been no statement or no evidence from this witness stand from the State of Alabama that there was ever a murder which occurred in the State of Alabama, and we would respectfully request that the plea of jurisdiction be granted, that the state's evidence be excluded with regard to any charge of murder against Mr. Larry Heath.

Next we would move to exclude the evidence based on the fact that the state has failed to make out a case of kidnapping, which is an aggravating circumstance under the charge which is pending against Mr. Larry Heath. There has been no evidence from the witness stand that there was an abduction from the home of Larry Heath. There has been no testimony that anyone saw Rebecca Heath removed from the home on the morning that she was found in Troup County, Georgia. For ought that appears, based on the statement introduced by the State of Alabama, which was written out by Officer Malueg, the person—or the person who actually made the statement, according to Officer Malueg, stated that Mrs. Heath was supposedly—supposed to be enroute to her parents in Georgia. With regard to any type of abduction, we feel the state has failed to make out a case with regard to kidnapping of Rebecca Heath or forcibly removing

her from the home of the Heaths, which was located in Russell County, Alabama, to the spot where the body was found in Troup County, Georgia.

[R-589] Your Honor, at this time we would also reassert our motion for plea of double—former jeopardy, in fact, for all the testimony from the witness stand indicates that these officers essentially testified to the same facts in the case which was concluded in Troup County Superior Court, being Case No. 986, in the Superior Court of Troup County, Georgia, wherein the defendant, Larry Heath, out of negotiations between he and the district attorney and his attorney at that point entered a plea of guilty to murder of Rebecca Heath, and on February 10, 1982, was sentenced to life imprisonment; that any testimony with regard to statements obtained or any evidence with regard to the charge of murder of Rebecca Heath which was pending in Troup County, Georgia, that this evidence should not be allowed in this particular court of law in that there has been no proof from the State of Alabama of any act or any criminal act which has occurred in the State of Alabama and, therefore, the charges or the state's evidence should be excluded in this case.

Your Honor, based on the new code of criminal procedure we would move for judgment of acquittal in this cause.

THE COURT: Response by the state?

MR. BENTON: Yes, sir, may it please the Court. The state relies on Title 15, Section 2-3 where it says, "When the commission of an offense commences in the State of Alabama and is consummated without the boundaries of the state, the offender is liable to be punished therefor in Alabama, and venue in such case is in the county in which the offense was commenced, unless otherwise provided by law." We would state to the Court that there has been evidence that [R-590] the offense was commenced at the Heath residence in Russell County.

With regard to the kidnapping we would refer the Court's attention to Title 13A-6-40 in which it says the following definitions apply to kidnapping: "To restrain, to intentionally or knowingly restrict a person's movements unlawfully and without consent, so as to interfere substantially with their liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in places to which he has been moved. Restraint is without consent if it is accomplished by physical force, intimidation, or deception."

We submit to the Court that this was by deception for the purpose of murder.

THE COURT: These motions and response have been made outside the presence of the jury. The defendant has made a motion to exclude the state's evidence. That motion will be denied. A motion for judgment of acquittal; that motion will be denied. There is a motion to dismiss the case for lack of jurisdiction or a plea to the jurisdiction of this court; that plea and motion will each be denied.

The pleas of former jeopardy and autrefois convict are each denied.

* * * *

PORTION OF PROSECUTION'S FIRST CLOSING ARGUMENT TO JURY CONCERNING ALABAMA'S LAW OF TERRITORIAL CRIMINAL JURISDICTION JANUARY 12, 1983

[Trial Record at 610-1.]

* * * *

[R-610] MR. ESTES: The defense has made much and will make much in their closing, I'm sure, about the fact that we cannot tell you and we cannot show you exactly where and precisely how Rebecca McGuire Heath met her death; but I submit to you, and the judge will charge you, that under the law of Alabama, if that crime is commenced here in the State of Alabama [R-611]—and, indeed we submit it's been proven that she was kidnapped in the State of Alabama—if they took her to Tennessee or to New York or California or even the moon before they killed her, it makes no difference, that crime was commenced right here in Russell County, Alabama. And it makes no difference where she was killed; that was the culmination of that crime that began right here in Russell County, Alabama. And as a jury of Russell County citizens, I ask you to let the word go out from here that Russell County does not tolerate that kind of behavior, and I ask you to convict that defendant as he's charged in the indictment, to find him guilty.

Thank you very much.

THE COURT: Thank you, Mr. Estes.

* * * *

PORTION OF PROSECUTION'S SECOND CLOSING ARGUMENT TO JURY JANUARY 12, 1983

[Trial Record at 629.]

* * * *

[R-629] MR. BENTON: I'm not concerned what somebody else may have done. I'm concerned that one of our laws was broken and that one of our citizens of Russell County was taken and violated, whether it be by a family member or by somebody else. Our law calls that those folks have to answer and they have to answer to people just like you.

* * * *

I'm here to tell you that we cannot allow our citizens to be taken, whether they be killed in the house, in an automobile, or in a foreign land. The home has always been a place that we could seek refuge, and there are certain laws that give added protection to those when they're in your house or your place of business.

* * * *

PORTION OF JUDGE'S CHARGE TO TRIAL JURY CONCERNING ALABAMA'S LAW OF TERRITORIAL CRIMINAL JURISDICTION JANUARY 12, 1983

[Trial Record at 637.]

* * * *

[R-637] Now, the laws of Alabama state that a criminal charge may be brought against a person if the crime that's charged has been completed entirely in the State of Alabama. Alabama also has a law that states when a commission of an offense is commenced or begun in the State of Alabama and is consummated—that is, completed—without the boundaries of the state—that is, outside the boundaries of Alabama—the offender is liable to be punished for this offense in Alabama and venue—that is, the place where the criminal trial or the criminal charge is brought—would be in the county in which the offense was begun, unless it would otherwise be provided by law.

* * * *

JURY'S VERDICT
JANUARY 12, 1983

[Trial Record at 647-8.]

* * * *

[R-647] THE COURT: Mr. Wilks, you are the foreman of the jury?

JUROR JAMES R. WILKS: Yes, sir.

THE COURT: Has the jury taken a vote in regards to the verdict in this case?

JUROR JAMES R. WILKS: Yes, sir, the jury has took a verdict—I mean, a vote.

THE COURT: Has the jury unanimously decided upon a verdict?

JUROR JAMES R. WILKS: Yes, sir, the jury has unanimously decided upon a verdict.

THE COURT: Would you stand, please, and read the verdict of the jury.

JUROR JAMES R. WILKS: We, the jury, find the defendant guilty of murder during kidnapping in the first degree as charged in the indictment. This 12th day of January 1983.

* * * *

[R-648] THE COURT: The verdict being unanimous and in one of the proper forms, will be received by the Court at this time.

* * * *

TRIAL JURY'S ADVISORY VERDICT OF DEATH SENTENCE JANUARY 12, 1983

[Trial Record at 697.]

* * * *

[R-697] THE COURT: Has the jury reached an advisory verdict?

JUROR JAMES R. WILKS: Yes, sir, we've reached a verdict.

THE COURT: Would you stand, please, and read the verdict?

JUROR JAMES R. WILKS: We, the jury, after weighing the aggravating and mitigating circumstances of this case, determine that the one or more aggravating circumstances outweigh the mitigating circumstances, and recommend the punishment of the defendant be death."

* * * *

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

Criminal Action No. CC 82-392

STATE OF ALABAMA, PLAINTIFF

vs.

LARRY GENE HEATH, DEFENDANT

JURY VERDICT

We, the jury, find the defendant guilty of murder during kidnapping in the first degree, as charged in the indictment.

This 12 day of January, 1983.

/s/ James R. Wilks
Foreman

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

Criminal Action No. CC 82-392

STATE OF ALABAMA, PLAINTIFF

vs.

LARRY GENE HEATH, DEFENDANT

JURY VERDICT

We, the jury, after weighing the aggravating and mitigating circumstances in this case, determine that the one or more aggravating circumstances outweigh the mitigating circumstances, and recommend the punishment of the the defendant at death.

Vote for this verdict 12

Vote against this verdict —

This 13th day of January, 1983.

/s/ James R. Wilks
Foreman

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

No. CC-82-392

STATE OF ALABAMA

vs.

LARRY GENE HEATH, DEFENDANT

TRIAL JUDGE'S ORAL FINDINGS IN SENTENCING PHASE AND IMPOSITION OF DEATH SENTENCE, FEBRUARY 10, 1983

[Trial Record at 718-721.]

* * * *

[R-718] THE COURT: The record will reflect the rulings of the Court and the bases therefor on those rulings.

Upon the jury verdict of guilty of murder during kidnapping in the first degree, the Court adjudges the defendant guilty of murder during kidnapping in the first degree, that is, that Larry Gene Heath did intentionally cause the death of Rebecca Heath by shooting her with a pistol, and Larry Gene Heath caused said death during Larry Gene Heath's abduction of or attempt to abduct Rebecca Heath with the intent to inflict physical injury upon her, in violation of Section 13A-5-40(a)(1) of the Code of Alabama 1975, as amended.

The Court finds the following aggravating circumstances to exist in this case: The capital offense was committed while the defendant was engaged in the commission of a kidnapping.

The Court finds that the following aggravating circumstances do not exist in this case: The capital offense was committed by a person under sentence of imprisonment.

The defendant was previously convicted of another capital felony involving the use of threat of violence to the person.

The defendant knowingly created a great risk of [R-719] death to many persons.

The capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

The capital offense was committed for pecuniary gain.

The capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

The capital offense was especially heinous, atrocious, or cruel compared to other offenses as interpreted by the appellate courts of this state and nation.

Upon consideration of all of the evidence brought forth at the trial in this case, the sentence hearing, and the presentence investigation report, the Court finds that the following mitigating circumstance does exist in this case: The defendant was convicted of the murder of Rebecca Heath in the Superior Court of Troup County, Georgia, on February 10th, 1982, and received a sentence of life imprisonment in that court.

The Court finds that the following mitigating circumstances do not exist in this case: First, that the defendant has no significant history of prior criminal activity. The Court finds that the defendant has before the sentence hearing been convicted of three felony offenses, those being buying, receiving, or concealing stolen property, forgery, and a criminal attempt of theft by extortion.

The other mitigating circumstances that do not exist in this case are as follows: The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

[R-720] The victim was a participant in the defendant's conduct or consented to it.

The defendant was an accomplice in the capital offense committed by another person and his participation was relatively minor.

The defendant acted under extreme duress or under the substantial domination of another person.

The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

The age of the defendant at the time of the crime.

Any other circumstances that have been offered pursuant to Section 13A-5-52 of the Code of Alabama.

Upon consideration of the evidence in this case, the matters brought forth in the sentence hearing, and the hearing conducted before the Court, and upon consideration of the aggravating/mitigating circumstances in this case, the Court finds that the aggravating circumstances outweighs any mitigating circumstances. It is, therefore, ordered by the Court that the punishment in this case is fixed at death.

It is ordered by the Court that the defendant, Larry Gene Heath, be sentenced to death by electrocution on the 17th day of March, 1983.

The Sheriff of Russell County, Alabama, shall deliver the same Larry Gene Heath to the custody of the Warden of the William C. Holman unit of the state prison system at Atmore, Alabama, together with a warrant from the clerk of this court as set forth hereafter.

The clerk of the court is ordered to issue a warrant under the seal of this court directed to the Warden of William [R-721] C. Holman unit of the state prison system at Atmore, Alabama, for the execution of the sentence of death, which warrant shall recite the fact of conviction and shall set forth specifically the offense, the judgment of the Court, and the time fixed for defendant's execution. This warrant shall command the warden to proceed at the time and place named in the sentence to

carry the same into execution as provided in Section 15-18-82, Code of Alabama 1975. The clerk shall deliver said warrant to the Sheriff of Russell County, Alabama, who shall deliver the same, together with the defendant, Larry Gene Heath, to the said warden.

Pursuant to Section 13A-5-55, the judgment of conviction is subject to an automatic review. Notice of appeal is entered and the sentence herein is suspended pending the appeal.

The findings that have just been recited will be reduced to writing, made a part of the record of the case, along with the other findings and requirements as provided by law.

The defendant will be remanded to the custody of the sheriff.

* * * *

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

No. CC-82-392

STATE OF ALABAMA

vs.

LARRY GENE HEATH, DEFENDANT

TRIAL JUDGE'S WRITTEN FINDINGS IN SENTENCING PHASE AND IMPOSITION OF DEATH SENTENCE FEBRUARY 10, 1983

[Trial Record at 839-45. Also set out at Trial Record at 852-8.]

[839]

DETERMINATION OF SENTENCE BY THE COURT

The defendant herein, with assistance of counsel at all proceedings, was found guilty as charged in the indictment. Thereafter a sentence hearing with participation by the same jury as at trial was held. Pursuant to Section 13A-5-47, Code of Alabama 1975, the Court makes the following findings of fact summarizing the crime herein and the defendant's participation in the crime:

FINDINGS OF FACT
GUILT PHASE

In early August, 1982 defendant contacted his brother, Jerry Heath, and Jerry Heath set up a meeting at which he, defendant, and Ricky Heath, another brother of defendant, discussed defendant's intentions to kill his wife,

Rebecca Heath. Defendant gave Ricky Heath $40.00 for his expenses toward accomplishing that result; however, nothing developed from this meeting.

Defendant thereupon contacted Jerry Heath a second time. Jerry Heath told defendant he knew somebody else that might commit the murder. Subsequently Jerry Heath told defendant to meet a person at an apartment in Columbus, Georgia. This person was Charles Edward Owens. Sometime later Owens and two other men, Gregory Hughes [840] Lumpkin and Sanders Williams, went to defendant's place of employment. There defendant discussed with Williams the details of his plans. Defendant wanted the homicide to appear to be an accident. Defendant paid Williams $100.00 as a down payment. Later that day defendant went to Owens' apartment and gave a pistol to Williams. Defendant planned for Williams to force his way into Rebecca Heath's car while she took defendant to work. Williams was then to kill Rebecca Heath and make her death appear to be accidental. The next day defendant gave Owens another $300.00, so that they could obtain an automobile to carry out the plan.

Nothing materialized from this plan, and several days later Owens told defendant Williams had left and his whereabouts were unknown. Owens stated to defendant that he and his partner, Gregory Hughes Lumpkin, would do the job for defendant. Approximately two days later, on August 31, 1981, at about 2:00 A. M., Owens called defendant at defendant's home and said that he and Lumpkin were prepared for the job. At 6:00 A. M. defendant locked and left his house. Before leaving he put a brick in his car which was also used by his wife. The brick was to be placed on the accelerator in carrying out the appearances of an accident. He also left a piece of wiring in the car to tie down the steering wheel.

Defendant went to Owens' apartment and explained how he wanted the act done. Defendant then went to the apartment of his girlfriend, Denise Lambert, and waited

for a call from Owens. After receiving the call, defendant went to a service station in Columbus, [841] Georgia, and turned over his automobile, a 1978 green Oldsmobile, to Lumpkin. Owens was also present, driving a white Mustang.

Defendant and Denise Lambert, driving Lambert's truck, led Owens and Lumpkin to Russell County, Alabama. On the road leading to his house, defendant stopped and pointed out the house to Lumpkin. Defendant then left as Owens pulled up beside Lumpkin. Defendant had left his house keys on the key ring with his car keys, so that Lumpkin had the keys to the house. The evidence indicates that Rebecca Heath was in her home when defendant pointed out his house to Owens and Lumpkin. At 9:10 A. M. that same morning defendant's car was seen a short distance off the road known as Smokey Road in Troup County, Georgia. A light-colored Mustang was seen sideways in the road one hundred yards from defendant's automobile. It then went down the road at a high rate of speed.

The body of Rebecca Heath was found at approximately 11:00 A. M. She was dead, having suffered a fatal gunshot wound through the right eye and into the brain. She was nine months pregnant.

In August, 1981 defendant borrowed $2,500.00 from Southern Discount Company. Rebecca Heath was a cosigner of this loan. $500.00 of this loan was used by defendant to build concrete pads for his dog pen. Thereafter defendant formed the intention to use the balance of $2,000.00 to pay for the murder of his wife. This sum of money was used for that purpose.

Rebecca Heath was forcibly abducted from her home in Russell County, Alabama, for the purpose of inflicting sufficient physical [842] injury to her to cause her death. There is no evidence to suggest that at any time she was armed with any weapon. There is no evidence to indicate that the killing of Rebecca Heath was a justifiable or excusable homicide.

Defendant states that he formed the intention and plan to murder his wife because he was under the influence of extreme mental and emotional disturbance based upon his belief that his wife was engaged in an extramarital affair with another man and was pregnant by that man.

The Court finds that defendant initiated, procured, aided and abetted, and planned the abduction of Rebecca Heath so that she could be murdered. Defendant intentionally hired others with whom he was acting in complicity to intentionally abduct Rebecca Heath and to intentionally murder the said Rebecca Heath.

FINDINGS FROM SENTENCING PHASE

After the trial a sentence hearing was conducted with participation by the jury. The state rested upon the evidence brought forth at trial. The defendant presented evidence by witnesses called to testify. Arguments were made to the jury by both sides. The jury deliberated after being charged by the Court and unanimously returned a recommendation that defendant's punishment be death.

The Court ordered the probation officer for this circuit to prepare a written presentence investigation report. This report was duly prepared and filed. Copies of the same were furnished to counsel for both parties. A hearing was held for the parties to respond to the report and to present evidence about any part of the report which [843] would be the subject of a factual dispute. At this hearing the state presented no further evidence. The defendant testified and gave evidence disputing certain matters in the presentence investigation report. The defendant also stated that he did have remorse for the killing of his wife, Rebecca Heath.

The Court finds from the evidence presented in this case that the defendant was guilty and is guilty of the murder of Rebecca Heath during a kidnapping in the first degree of the said Rebecca Heath.

The Court finds the following aggravating circumstance to exist in this case: The capital offense was committed while the defendant was engaged in the commission of a kidnapping.

The Court finds that the following aggravating circumstances do not exist in this case:

A. The capital offense was committed by a person under sentence of imprisonment.

B. The defendant was previously convicted of another capital felony or a felony involving the use of threat of violence to the person.

C. The defendant knowingly created a great risk of death to many persons.

D. The capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

E. The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, rape, robbery, or burglary.

[844] F. The capital offense was committed for pecuniary gain.

G. The capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

H. The capital offense was especially heinous, atrocious, or cruel compared to other capital offenses.

Upon consideration of all of the evidence brought forth at the trial in this case, the sentence hearings, and the presentence investigation report, the Court finds that the following mitigating circumstance exists in this case: Defendant was convicted of the murder of Rebecca Heath in the Superior Court of Troup County, Georgia, on February 10, 1982, and received a sentence of life imprisonment in that court.

The Court finds that the following mitigating circumstances do not exist in this case:

A. The defendant has no significant history of prior criminal activity. The Court finds that the defendant does have a significant history of prior criminal activity in that before the sentence hearing in this case he was convicted of three felony offenses, those being buying, receiving or concealing stolen property, forgery, and a criminal attempt of theft by extortion.

B. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

C. The victim was a participant in the defendant's conduct or consented to it.

D. The defendant was an accomplice in the capital offense [845] committed by another person and his participation was relatively minor.

E. The defendant acted under extreme duress or under the substantial domination of another person.

F. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired.

G. The age of the defendant at the time of the crime.

H. Any other mitigating circumstances offered pursuant to Section 13A-5-52, Code of Alabama 1975.

Upon considering and weighing the aggravating circumstance with the mitigating circumstances in this case, the Court is of the opinion that the aggravating circumstance outweighs any mitigating circumstances. It is, therefore,

ORDERED AND ADJUDGED BY THE COURT that the defendant be sentenced to death by electrocution as specified in the laws of this state and as set forth in an order of sentence by this Court.

DONE this the 10th day of February, 1983.

/s/ Wayne T. Johnson
Circuit Judge

IN THE CIRCUIT COURT
OF RUSSELL COUNTY, ALABAMA

No. CC-82-392

STATE OF ALABAMA

vs.

LARRY GENE HEATH, DEFENDANT

TRIAL JUDGE'S ORDER OF SENTENCING
FEBRUARY 10, 1983

[Trial Record at 834-6.]

[834] ORDER OF SENTENCING

This case is now before the Court for sentencing. The State is represented by its district attorney and the defendant is present in open court with his counsel, Larry W. Roney, Esq., and R. Michael Raiford, Esq. The Court has previously conducted a sentence hearing with participation by the jury and a hearing for the parties to present evidence regarding matters in the contents of the presentence report and for arguments to be made regarding the proper sentence in this case. The defendant, Larry Gene Heath, being asked by the Court if he has anything to say as to why the sentence of the Court should not be pronounced or before sentence is pronounced says proceedings violate the 5th Amendment and laws of this state.

Upon jury verdict of guilty of murder during kidnapping in the first degree, the Court adjudges the defendant guilty of murder during kidnapping in the first degree,

that is, that Larry Gene Heath did intentionally cause the death of Rebecca Heath by shooting her with a pistol, and Larry Gene Heath caused said death during Larry Gene Heath's abduction of, or [835] attempt to abduct, Rebecca Heath, with the intent to inflict physical injury upon her, in violation of Section 13A-5-40(a)(1) of the Code of Alabama 1975, as amended. Upon consideration of the evidence in this case, the matters brought forth in the sentence hearing, and upon consideration of the aggravating and mitigating circumstances in this case, the Court finds that the aggravating circumstance outweighs any mitigating circumstances.

It is, therefore,

ORDERED BY THE COURT that the punishment in this case is fixed at death.

IT IS ORDERED BY THE COURT that the defendant, Larry Gene Heath, be sentenced to death by electrocution on the 17th day of March, 1983.

The Sheriff of Russell County, Alabama, shall deliver the said Larry Gene Heath to the custody of the Warden of the William C. Holman unit of the state prison system at Atmore, Alabama, together with a warrant from the clerk of this court as set forth hereafter.

The executioner designated by the laws of this state, at the proper place specified by law for the execution of one sentenced to death, shall cause a current of electricity of sufficient intensity to cause death to pass through the body of the defendant, with such current of electricity to be applied [836] and to continue until the defendant, Larry Gene Heath, is dead.

The clerk of this court is ordered to issue a warrant under the Seal of this Court directed to the warden of William C. Holman unit of the state prison system at Atmore, Alabama, for the execution of the sentence of death, which warrant shall recite the fact of conviction and shall set forth specifically the offense, the judgment of the Court, and the time fixed for defendant's execu-

tion. Said warrant shall command the warden to proceed at the time and place named in the sentence to carry the same into execution as provided in Section 15-18-82, Code of Alabama 1975. The clerk shall deliver said warrant to the Sheriff of Russell County, Alabama, who shall deliver the same, together with the defendant, Larry Gene Heath, to said warden.

Pursuant to Section 13A-5-55, the judgment of conviction is subject to automatic review. Notice of appeal is entered and the sentence herein is suspended, pending appeal.

DONE this the 10th day of February, 1983.

/s/ Wayne T. Johnson
Circuit Judge

COURT OF CRIMINAL APPEALS OF ALABAMA

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4 Div. 134

LARRY GENE HEATH

v.

STATE

July 5, 1983

Rehearing Denied Aug. 2, 1983

Larry W. Roney, Phenix City, for appellant.

Charles A. Graddick, Atty. Gen., and William D. Little and Ed Carnes, Asst. Attys. Gen., for appellee.

OPINION OF THE COURT

BOWEN, Presiding Judge.

In August of 1981, Rebecca McQuire Heath was nine months pregnant. In that same month, she was kidnapped from her home in Russell County, Alabama, and executed by a single gunshot wound to her head. Her body was discovered in Troup County, Georgia. Her executioners had been hired by her husband, the defendant, for the sum of $2000.

The defendant was indicted for murder during a kidnapping in the first degree in violation of Section 13A-5-40(a)(1), Code of Alabama 1975. At the guilt-finding phase of his trial, a jury found the defendant guilty as charged in the indictment. At the sentence-determining phase, the jury fixed the defendant's punishment at death. The trial judge then held the hearing mandated by Sec-

tion 13A-5-47, found that the aggravating circumstance outweighed the mitigating circumstance and sentenced the defendant to death. The written findings of the trial court are attached to this opinion as Exhibit A. The trial and sentencing proceedings were conducted in accordance with *Beck v. State*, 396 So.2d 645 (Ala. 1981), and *Beck v. Alabama*, 447 U.S. 625, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980). One issue is presented on appeal.

I

The defendant's sole contention on appeal is that his pleas of autrefois convict and former jeopardy were due to be granted. The defendant pled guilty to his wife's murder before the Superior Court of Troup County, Georgia, in February of 1982. He was sentenced to life imprisonment. The defendant argues that this prior Georgia conviction should have barred his subsequent trial and conviction in Alabama for the same criminal conduct.

The double jeopardy clauses of both the Fifth Amendment to the Constitution of the United States and Section 9, Art. I, of the Alabama Constitution, provide that no person shall "for the same offense" be twice put in jeopardy of life or limb. Consequently,

> "A plea of former jeopardy is unavailing unless the offense presently charged is precisely the same in law and fact as the former one relied on under the plea. And this is true even if both cases are founded on the same facts but the crimes charged were not the same in law." *Racine v. State*, 291 Ala. 684, 687 286 So.2d 896 (1973).

The doctrine of dual sovereignty provides that, "in the absence of a statute, the rule against double jeopardy applies only to offenses against the same sovereignty." 22 C.J.S. *Criminal Law*, Section 296 (1961). *Barnett v. State*, 373 So.2d 1226 (Ala.Cr. App. 1979), cert. denied, 373 So.2d 1230 (Ala.1980). The United States Supreme Court has recognized this doctrine in holding that a single

act may constitute an offense against both state and federal governments and that the offender may be prosecuted by both governments. *Abbate v. United States*, 359 U.S. 187, 79 S.Ct. 666, 3 L.Ed.2d 729 (1959); *Bartkus v. Illinois*, 359 U.S. 121, 79 S.Ct. 676, 3 L.Ed.2d 684 (1959). Also recognizing the principle that a person convicted in a state court may subsequently be prosecuted for the same act in federal court are *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978); *Waller v. Florida*, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970), rehearing denied, 398 U.S. 914, 90 S.Ct. 1684, 26 L.Ed.2d 79 (1970); *United States v. NG*, 699 F.2d 63 (2nd Cir.1983); *Pope v. Thone*, 671, F.2d 298 (8th Cir. 1982), cert. denied, 457 U.S. 1140, 102 S.Ct. 2974, 73 L.Ed.2d 1360 (1982); *Brown v. United States*, 551 F.2d 619 (5th Cir.1977).

We have been cited to no federal case involving jeopardy and multiple state prosecutions. However, the courts of various states have recognized that a single act may constitute offenses against two different states and therefore prosecution in both states is constitutionally permissible under the principle of dual sovereignty. *People v. Walker*, 123 Cal.App. 3d 981, 177 Cal.Rptr. 147 (1981); *State v. Booth*, 418 So.2d 385 (Fla.App.1982); *State v. Brown*, 2 Ohio App.3d 321, 441 N.E.2d 1126 (1981); *State v. Straw*, 626 S.W.2d 286 (Tenn.Cr. App. 1981); *State v. Glover*, 500 S.W.2d 271 (Mo.App.1973).

In *Hare v. State*, 387 So.2d 299, 300 (Ala.Cr.App. 1980), this Court held that such dual prosecutions are permitted.

> "'A conviction in one state for an act in violation of its laws is not a bar to a prosecution in another for the same act, if it violates the laws of the latter state, unless it is otherwise provided by statute, or unless by compact between the states it has been agreed that the jurisdiction shall vest exclusively in the state first apprehending and arresting accused.' 22 C.J.S. Criminal Law, Section 296(c) (1961)."

In the absence of any statutory exception to the dual sovereignty doctrine, see *Barnett*, supra, we adhere to the principle stated in *Hare*, supra, and find no error in the denial of the defendant's pleas of former jeopardy.

II

We have fulfilled our statutory duty and searched the record for error affecting any substantial right of the defendant but have found none. Alabama Code Section 12-22-241 (1975); A.R.A.P. 45A.

We now review the propriety of the death sentence as required by Section 13A-5-53, Code of Alabama 1975. We have reviewed the sentencing proceedings and find therein no error adversely affecting the rights of the defendant. The trial court's finding of the aggravating and mitigating circumstances is supported by the evidence. The only aggravating circumstance relied on (the capital offense was committed while the defendant was an accomplice in the commission of a kidnapping, Section 13A-5-49(4)) was established by the verdict of conviction itself. This was proper under Section 13A-5-50, Code of Alabama 1975.

Explicitly addressing each of the three questions specified in Section 13A-5-53(b), we find that death is the proper sentence in this case.

(1) Under Section 13A-5-53(b)(1), there is no evidence that the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor. The trial court instructed the jury in its oral charge in the sentencing hearing not to let any sympathy, bias, passion, or prejudice affect their deliberations or sentence verdict. In the absence of any evidence to the contrary, we must assume that the jurors followed these instructions. *Marshall v. Lonberger*, 459 U.S. 422, 438, n. 6, 103 S.Ct. 843, 853, n. 6, 74 L.Ed.2d 646 (U.S.1983); *Parker v. Randolph*, 442 U.S. 62, 73, 99 S.Ct. 2132, 2139, 60 L.Ed.2d 713 (1979).

(2) Our independent weighing of the aggravating and mitigating circumstances required by Section 13A-5-53

(b)(2) indicates that death is the proper sentence. The record discloses the chronicle of a murder deliberately planned and engineered. The defendant overcame every obstacle in his path to insure the consummation of his wicked scheme. In consideration of the evidence presented, we do not see how the jury could have returned any verdict but that of guilty with a punishment of death.

In consideration of the third factor in determining whether the death sentence was proper, Section 13A-5-53 (b)(3), we find that the sentence of death is neither excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. See *Williamson v. State*, 370 So.2d 1054 (Ala.Cr. App.1978), affirmed, 370 So.2d 1066 (Ala.1979), vacated and remanded on other grounds, 448 U.S. 903, 100 S.Ct. 3042, 65 L.Ed.2d 1132 (1980).

In reviewing this factor, we have considered the punishments and convictions of the defendant's accomplices in the State of Georgia. Each accomplice was indicted for murder during kidnapping first degree. The defendant's girlfriend, Denise Paige Lambert, pled guilty to conspiracy to commit murder and was sentenced to ten years' imprisonment. Sanders Williams, who was hired to commit the murder but disappeared after several attempts "fell through", also pled guilty to conspiracy to commit murder and received a ten-year sentence.

Jerry Heath, the defendant's brother, who allegedly furnished the defendant with the name of someone who would commit the murder, was tried and acquitted. The two hired assassins, Charles Edward Owens and Gregory Hughes Lumpkin, were convicted of murder and received life sentences.

Our review of the entire record convinces us that the judgment of the circuit court is due to be and it is hereby affirmed.

AFFIRMED.

All Judges concur.

EXHIBIT A

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

Criminal Action No. CC 82-392

STATE OF ALABAMA, PLAINTIFF

vs.

LARRY GENE HEATH, DEFENDANT

DETERMINATION OF SENTENCE BY THE COURT

The defendant herein, with assistance of counsel at all proceedings, was found guilty as charged in the indictment. Thereafter a sentence hearing with participation by the same jury as at trial was held. Pursuant to Section 13A-5-47, Code of Alabama 1975, the Court makes the following findings of fact summarizing the crime herein and the defendant's participation in the crime:

FINDINGS OF FACT

GUILT PHASE

In early August, 1982 defendant contacted his brother, Jerry Heath, and Jerry Heath set up a meeting at which he, defendant, and Ricky Heath, another brother of defendant, discussed defendant's intentions to kill his wife, Rebecca Heath. Defendant gave Ricky Heath $40.00 for his expenses toward accomplishing that result; however, nothing developed from this meeting.

Defendant thereupon contacted Jerry Heath a second time. Jerry Heath told defendant he knew somebody else

that might commit murder. Subsequently Jerry Heath told defendant to meet a person at an apartment in Columbus, Georgia. This person was Charles Edward Owens. Sometime later Owens and two other men, Gregory Hughes Lumpkin and Sanders Williams, went to defendant's place of employment. There defendant discussed with Williams the details of his plans. Defendant wanted the homicide to appear to be an accident. Defendant paid Williams $100.00 as a down payment. Later that day defendant went to Owens' apartment and gave a pistol to Williams. Defendant planned for Williams to force his way into Rebecca Heath's car while she took defendant to work. Williams was then to kill Rebecca Heath and make her death appear to be accidental. The next day defendant gave Owens another $300.00, so that they could obtain an automobile to carry out the plan.

Nothing materialized from this plan, and several days later Owens told defendant Williams had left and his whereabouts were unknown. Owens stated to defendant that he and his partner, Gregory Hughes Lumpkin, would do the job for defendant. Approximately two days later, on August 31, 1981, at about 2:00 A.M., Owens called defendant at defendant's home and said that he and Lumpkin were prepared for the job. At 6:00 A.M. defendant locked and left his house. Before leaving he put a brick in his car which was also used by his wife. The brick was to be placed on the accelerator in carrying out the appearances of an accident. He also left a piece of wiring in the car to tie down the steering wheel.

Defendant went to Owens' apartment and explained how he wanted the act done. Defendant then went to the apartment of his girlfriend, Denise Lambert, and waited for a call from Owens. After receiving the call, defendant went to a service station in Columbus, Georgia, and turned over his automobile, a 1978 green Oldsmobile, to Lumpkin. Owens was also present, driving a white Mustang.

Defendant and Denise Lambert, driving Lambert's truck, led Owens and Lumpkin to Russell County, Alabama. On the road leading to his house, defendant stopped and pointed out the house to Lumpkin. Defendant then left as Owens pulled up beside Lumpkin. Defendant had left his house keys on the key ring with his car keys, so that Lumpkin had the keys to the house. The evidence indicates that Rebecca Heath was in her home when defendant pointed out his house to Owens and Lumpkin. At 9:10 A.M. that same morning defendant's car was seen a short distance off the road known as Smokey Road in Troup County, Georgia. A light-colored Mustang was seen sideways in the road one hundred yards from defendant's automobile. It then went down the road at a high rate of speed.

The body of Rebecca Heath was found at approximately 11:00 A.M. She was dead, having suffered a fatal gunshot wound through the right eye and into the brain. She was nine months pregnant.

In August, 1981 defendant borrowed $2,500.00 from Southern Discount Company. Rebecca Heath was a cosigner of this loan. $500.00 of this loan was used by defendant to build concrete pads for his dog pen. Thereafter defendant formed the intention to use the balance of $2,000.00 to pay for the murder of his wife. This sum of money was used for that purpose.

Rebecca Heath was forcibly abducted from her home in Russell County, Alabama, for the purpose of inflicting sufficient physical injury to her to cause her death. There is no evidence to suggest that at any time she was armed with any weapon. There is no evidence to indicate that the killing of Rebecca Heath was a justifiable or excusable homicide.

Defendant states that he formed the intention and plan to murder his wife because he was under the influence of extreme mental and emotional disturbance based upon his belief that his wife was engaged in an extra-

marital affair with another man and was pregnant by that man.

The Court finds that defendant initiated, procured, aided and abetted, and planned the abduction of Rebecca Heath so that she could be murdered. Defendant intentionally hired others with whom he was acting in complicity to intentionally abduct Rebecca Heath and to intentionally murder the said Rebecca Heath.

FINDINGS FROM SENTENCING PHASE

After the trial a sentence hearing was conducted with participation by the jury. The state rested upon the evidence brought forth at trial. The defendant presented evidence by witnesses called to testify. Arguments were made to the jury by both sides. The jury deliberated after being charged by the Court and unanimously returned a recommendation that defendant's punishment be death.

The Court ordered the probation officer for this circuit to prepare a written presentence investigation report. This report was duly prepared and filed. Copies of the same were furnished to counsel for both parties. A hearing was held for the parties to respond to the report and to present evidence about any part of the report which would be the subject of a factual dispute. At this hearing the state presented no further evidence. The defendant testified and gave evidence disputing certain matters in the presentence investigation report. The defendant also stated that he did have remorse for the killing of his wife, Rebecca Heath.

The Court finds from the evidence presented in this case that the defendant was guilty and is guilty of the murder of Rebecca Heath during a kidnapping in the first degree of the said Rebecca Heath.

The Court finds the following aggravating circumstance to exist in this case: The capital offense was committed while the defendant was engaged in the commission of a kidnapping.

The Court finds that the following aggravating circumstances do not exist in this case:

A. The capital offense was committed by a person under sentence of imprisonment.

B. The defendant was previously convicted of another capital felony or a felony involving the use of threat of violence to the person.

C. The defendant knowingly created a great risk of death to many persons.

D. The capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

E. The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, rape, robbery, or burglary.

F. The capital offense was committed for pecuniary gain.

G. The capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

H. The capital offense was especially heinous, atrocious, or cruel compared to other capital offenses.

Upon consideration of all of the evidence brought forth at the trial in this case, the sentence hearings, and the presentence investigation report, the Court finds that the following mitigating circumstances exists in this case: Defendant was convicted of the murder of Rebecca Heath in the Superior Court of Troup County, Georgia, on February 10, 1982, and received a sentence of life imprisonment in that court.

The Court finds that the following mitigating circumstances do not exist in this case:

A. The defendant has no significant history of prior criminal activity. The Court finds that the defendant

does have a significant history of prior criminal activity in that before the sentence hearing in this case he was convicted of three felony offenses, those being buying, receiving or concealing stolen property, forgery, and a criminal attempt of theft by extortion.

B. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

C. The victim was a participant in the defendant's conduct or consented to it.

D. The defendant was an accomplice in the capital offense committed by another person and his participation was relatively minor.

E. The defendant acted under extreme duress or under the substantial domination of another person.

F. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired.

G. The age of the defendant at the time of the crime.

H. Any other mitigating circumstances offered pursuant to Section 13A-5-52, Code of Alabama 1975.

Upon considering and weighing the aggravating circumstance with the mitigating circumstances in this case, the Court is of the opinion that the aggravating circumstance outweighs any mitigating circumstances. It is, therefore,

ORDERED AND ADJUDGED BY THE COURT that the defendant be sentenced to death by electrocution as specified in the laws of this state and as set forth in an order of sentence by this Court.

DONE this the 10th day of February 1983.

Wayne T. Johnson

Circuit Judge

ORDER OF SENTENCING

This case is now before the Court for sentencing. The State is represented by its district attorney and the defendant is present in open court with his counsel, Larry W. Roney, Esq., and R. Michael Raiford, Esq. The Court has previously conducted a sentence hearing with participation by the jury and a hearing for the parties to present evidence regarding matters in the contents of the presentence report and for arguments to be made regarding the proper sentence in this case. The defendant, Larry Gene Heath, being asked by the Court if he has anything to say as to why the sentence of the Court should not be pronounced or before sentence is pronounced says proceedings violate the 5th Amendment and laws of this state.

Upon jury verdict of guilty of murder during kidnapping in the first degree, the Court adjudges the defendant guilty of murder during kidnapping in the first degree, that is, that Larry Gene Heath did intentionally cause the death of Rebecca Heath by shooting her with a pistol, and Larry Gene Heath caused said death during Larry Gene Heath's abduction of, or attempt to abduct, Rebecca Heath, with the intent to inflict physical injury upon her, in violation of Section 13A-5-40(a)(1) of the Code of Alabama 1975, as amended. Upon consideration of the evidence in this case, the matters brought forth in the sentence hearing, and upon consideration of the aggravating and mitigating circumstances in this case, the Court finds that the aggravating circumstances outweighs any mitigating circumstances.

It is, therefore,

ORDERED BY THE COURT that the punishment in this case is fixed at death.

IT IS ORDERED BY THE COURT that the defendant, Larry Gene Heath, be sentenced to death by electrocution on the 17th day of March, 1983.

The Sheriff of Russell County, Alabama, shall deliver the said Larry Gene Heath to the custody of the Warden of the William C. Holman unit of the state prison system at Atmore, Alabama, together with a warrant from the clerk of this court as set forth hereafter.

The executioner designated by the laws of this state, at the proper place specified by law for the execution of one sentenced to death, shall cause a current of electricity of sufficient intensity to cause death to pass through the body of the defendant, with such current of electricity to be applied and to continue until the defendant, Larry Gene Heath, is dead.

The clerk of this court is ordered to issue a warrant under the Seal of this Court directed to the warden of William C. Holman unit of the state prison system at Atmore, Alabama, for the execution of the sentence of death, which warrant shall recite the fact of conviction and shall set forth specifically the offense, the judgment of the Court, and the time fixed for defendant's execution. Said warrant shall command the warden to proceed at the time and place named in the sentence to carry the same into execution as provided in Section 15-18-82, Code of Alabama 1975. The clerk shall deliver said warrant to the Sheriff of Russell County, Alabama, who shall deliver the same, together with the defendant, Larry Gene Heath, to said warden.

Pursuant to Section 13A-5-55, the judgment of conviction is subject to automatic review. Notice of appeal is entered and the sentence herein is suspended, pending appeal.

DONE this the 10th day of February, 1983.

/s/ Wayne T. Johnson

Circuit Judge

IN THE SUPREME COURT
OF ALABAMA

Sup. Ct. No. 1060

LARRY GENE HEATH

vs.

STATE OF ALABAMA

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF ALABAMA.

Comes now the Petitioner, Larry Gene Heath, by and through his attorney of record, and respectfully petitions this Honorable Court to review and to reverse the decision and judgment of the Court of Criminal Appeals of Alabama rendered in the above styled cause on July 5, 1983, affirming the judgment of conviction had in the Circuit Court of Russell County, Alabama.

Petitioner avers that he has duly filed an Application For Rehearing in the Court of Criminal Appeals of Alabama in this cause within the time required by law, raising the points hereinafter set forth, and that said Application For Rehearing was overruled on August 2, 1983.

As grounds for this Petition For Writ of Certiorari to the Court of Criminal Appeals the Petitioner sets forth and assigns the following, separately and severally:

The basis of this Petition For Writ of Certiorari is as follows: The Court of Criminal Appeals affirmed the judgment of conviction had in the Circuit Court of Russell County, Alabama, when in fact the record affirmatively shows that Petitioner was convicted in the State of Georgia and in the State of Alabama for the same offense, which is percisely the same in law and fact and that a decision is needed by this Court as to whether or not the prosecution in the State of Alabama constituted double jeopardy in violation of the 5th Amendment of the United States Constitution.

WHEREFORE, THESE PREMISES CONSIDERED, Petitioner urges that a Writ of Certiorari be isued from this Court to the Court of Criminal Appeals and that this Court proceed to review and correct the errors complained of and to reverse the judgment of the Court of Criminal Appeals affirming the judgment of conviction had in the Circuit Court of Russell County, Alabama and render such judgment as said Court should have rendered in addition to such other relief as Petitioner may be entitled.

DATED: August 10, 1983

Respectfully submitted,
LARRY W. RONEY
Attorney at Law, P.C.

/s/ Larry W. Roney
LARRY W. RONEY
Post Office Box 128
Phenix City, Alabama
36867-0002
Attorney for Petitioner

[Supporting documents omitted; certificate of service omitted]

• • • •

THE SUPREME COURT OF ALABAMA

No. 82-1060

EX PARTE LARRY GENE HEATH

(RE LARRY GENE HEATH

v.

STATE OF ALABAMA)

July 6, 1984

Larry W. Roney, Phenix City, for petitioner.

Charles A. Graddick, Atty. Gen., and William D. Little, Asst. Atty. Gen., for respondent.

OPINION OF THE COURT

FAULKNER, Justice.

The petitioner was convicted of murder during a kidnapping in violation of § 13A-5-40(a)(1), Code of Alabama, and was sentenced to die. The Court of Criminal Appeals reviewed the petitioner's conviction and, after independently determining that the death penalty was appropriate, affirmed his conviction and sentence. *Heath v. State*, 455 So.2d 898 (Ala.Crim.App. 1983). We granted certiorari pursuant to A.R.A.P. 39(c).

The facts are set out in detail in exhibit A as to the opinion of the Court of Criminal Appeals. In short, Heath

hired two men to abduct and murder his wife. After she was kidnapped and shot, her abductors abandoned her body in Georgia. Heath pleaded guilty to murder charges brought in Georgia and was sentenced to life in prison.

In his appeal to the Court of Criminal Appeals and in his petition to this Court, Heath raised only one issue, whether Alabama was probihited by the double jeopardy provisions of the United States and the Alabama Constitutions from prosecuting Heath for his wife's murder after his murder conviction in Georgia arising out of the same incident. United States Constitution, Amendment V.; Alabama Constitution Art. 1, § 9.

We agree with the Court of Criminal Appeals that the Double Jeopardy Clause of the Fifth Amendment and the double jeopardy clause of the Alabama Constitution each applies only to offenses against the same sovereign and, therefore, that the subsequent prosecution in Alabama was not barred. Prosecutions under the laws of separate sovereigns do not improperly subject an accused twice to prosecutions for the same offense. *United States v. Wheeler*, 435 U.S. 313, 317, 98 S.Ct. 1079, 1082, 55 L.Ed. 2d 303 (1978). Thus, a federal prosecution does not bar a subsequent state prosecution of the same person for the same acts on which the federal prosecution was based; nor does a prior state prosecution bar a federal one. *Abbate v. United States*, 359 U.S. 187, 79 S.Ct. 666, 3 L.Ed.2d 729 (1959); *Bartkus v. Illinois*, 359 U.S. 121, 79 S.Ct. 676, 3 L.Ed.2d 684 (1959). As the Supreme Court stated in *United States v. Wheeler*, 435 U.S. at 320, 98 S.Ct. at 1084:

> "*Bartkus* and *Abbate* rest on the basic structure of our federal system, in which States and the National Government are separate political communities. State and Federal Governments '[derive] power from different sources,' each from the organic law that established it. *United States v. Lanza*, 260 U.S. 377, 382 [43 S.Ct. 141, 142, 67 L.Ed.2d 314]. Each

> has the power, inherent in any sovereign, independently to determine what shall be an offense against its authority and to punish such offenses, and in doing so each 'is exercising its own sovereignty, not that of the other.' Ibid. And while the States, as well as the Federal Government, are subject to the overriding requirements of the Federal Constitution, and the Supremacy Clause gives Congress within its sphere the power to enact laws superseding conflicting laws of the States, this degree of federal control over the exercise of state governmental power does not detract from the fact that it is a State's own sovereignty which is the origin of its power."

The Supreme Court has never considered the question of the applicability, *vel non*, of the "dual sovereignty" doctrine to consecutive prosecutions by two states. It is clear that the "dual sovereignty" concept does not apply in every instance where successive cases are brought by separate entities. For instance, a state and a municipal subdivision of the same state cannot bring successive prosecutions for offenses arising out of the same conduct. *Waller v. Florida*, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed. 2d 435 (1970). The states of Alabama and Georgia are clearly separate political sovereignties, however. If, for double jeopardy purposes, Alabama is considered to be a sovereign entity vis-a-vis the federal government then surely it is a sovereign entity vis-a-vis the state of Georgia.

Alabama may choose not to prosecute individuals in situations like the one at bar where the defendant has been convicted of a serious offense and has received a substantial sentence in another state for an offense arising out of an act punishable under Alabama law. Such an exercise of prosecutorial restraint is not constitutionally mandated, however, and we decline to impose such a policy judicially under the guise of a constitutional pronouncement. See *Booth v. State*, 436 So.2d 36 (Fla.

1983). Such a rule would have the undesirable effect of depriving Alabama of the right to enforce its own laws in instances where another state has prosecuted an individual for an offense arising out of the transaction in question, even where the prosecution in another state is for a relatively minor offense.

After reviewing the record and considering the petition, the arguments of the parties, and the opinion of the Court of Criminal Appeals, we are of the opinion that the judgment below affirming the conviction and death sentence is due to be affirmed.

AFFIRMED.

TORBERT, C.J., and MADDOX, JONES, ALMON, SHORES, EMBRY, BEATTY, and ADAMS, JJ., concur.

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SUPREME COURT OF THE UNITED STATES

No. 84-5555

LARRY GENE HEATH, PETITIONER

v.

ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, limited to Question II.

In addition, the parties are requested to address the following question:

'What is the applicability, if any, of the dual sovereignty doctrine to successive prosecution by two different states?'

Justice Powell took no part in the consideration or decision of this motion and this petition.

March 4, 1985

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